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SELECT DOCUMENTS
ON
BRITISH COLONIAL POLICY
1830-1860

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EDITED BY
KENNETH N. BELL
AND
W. P. MORRELL

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PREFACE

THIS book must be read in conjunction with the three most famous documents of British colonial policy between 1830 and 1860—the *Durham Report*, Buller on *Responsible Government for Colonies*, and Wakefield on *The Art of Colonization*. To make room for hitherto unpublished material, it omits the documents bearing on the constitutional development of Canada which are given in Professor W. P. M. Kennedy's *Documents of the Canadian Constitution*. Its aim is to cover the whole field of colonial policy during the period, with special emphasis on the more neglected, but not less important, aspects of the subject, and to provide a convenient form for material hitherto scattered over many blue-books and preserved in public and family archives.

We have preserved the spelling of the original documents, but have not thought it necessary to preserve the punctuation where it seemed to obscure the sense.

Acknowledgements are due to the Earl Grey, for permission to print documents from the Grey family papers at Howick; to the Canadian Archives, for the extracts from the Elgin-Grey Correspondence; and to Mr. O. D. Skelton, for permission to reprint a document from his *Life and Times of Sir A. T. Galt*.

K. N. B.
W. P. M.

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INTRODUCTION

I. THE TIDE

MOST of the documents which this book prints or reprints are couched in the dignified, not to say pompous, language proper to official correspondence and legislative enactment. Their theme is the difficult and ungrateful task of 'Government at a Distance': 'furious assemblies, foolish governors, missionaries and slaves', to quote Henry Taylor's summary of the raw material of his duties at the Colonial Office. Manner and matter being what they are, it would be rash to expect this book to rival Macaulay's first volume, and displace the latest novel at the bedside of young ladies of fashion. Yet neither the topics which are here seen under treatment, nor the men whose comments on those topics are here quoted, lack either human interest or historical importance. Whatever may be the future of our civilization, the generation which, between 1830 and 1860, settled the character of British expansion overseas, made a decisive contribution to that future.

We know very little about movements of population, about the ebb and flow of numbers as one generation succeeds another. It seems clear, however, that, from whatever cause, there had been, since the fall of Rome, no such sudden increase of the inhabitants of any European area as occurred in the British Isles in the first half of the nineteenth century. We do know that this increase created, in England, Scotland, and Ireland, problems with which no statesmanship could cope. They were much too vast, too new, and too unexpected. But, just as the decay of Roman institutions and morale gave an outlet for the surplus population of the North and East to escape from impossible conditions at home, so the explorations and discoveries made between the fifteenth and the eighteenth centuries beyond the boundaries of Europe had revealed empty areas into which the surplus population of Europe could flow in the nineteenth. This flow is still in progress, for the nineteenth-century increase of population soon proved to be European in extent. It showed itself in Italy, in Russia, in Germany, in the Balkans. America and Asia opened their gates to this fresh onset of emigration, and the races of Europe are still spreading over the temperate zones of the world, as if it were indeed their mission to replenish the earth. Thus the movement, which the Spaniards in the south, and the English in

by his ventures in the slave trade he was doing good to the soul of the negro. Protestantism, once securely established, was bound to develop some of the missionary zeal which had already distinguished the Counter-Reformation, just as in the economic sphere the search for improved methods of production is followed by the search for markets. When religious persecution became, with the improvement of public order, the preserve of bigots, a period of apathy naturally followed, and men agreed to differ because they had ceased to care. But eighteenth-century urbanity gave John Wesley his chance. The revival of religious zeal which he led, and transmitted to the Evangelicals who remained Anglicans, differed from Puritanism in being far more didactic: it had a missionary spirit, as had the Friars in the Middle Ages, whereas the Puritans, like the monastic orders, were occupied rather with personal salvation. To the Evangelicals, as to the Friars, propaganda rather than self-preservation became in a peaceful England the matter of the moment. Perhaps it was the same instinct, the same spirit of the age, which made the *citoyen-soldat* of France and the *rentier* 'Saint' of Britain both so eager to convert the world. For both at their best had the same faith in humanity, the same desire to transcend the barriers of caste, and to humanize the relationship of man to man, and both at their worst the same patronizing pity for the heathen in his blindness who bows down to wood and stone, or to crowns and coronets, the same sharp eye for other people's mores. At all events, the crusade against privilege in France coincided in time with a crusade against slavery in England: the sins of the noblesse and the wrongs of the negro roused the same resentment in people whose own vested interests and familiar vices were of another sort, and the French yearned over the benighted subjects of European monarchies no more eagerly than did the English over the wronged and heathen Zulu and the ignorant but blameless Hottentot.

In this dynamic age it was not easy to be wise. Wisdom, after all, is the fruit of experience, and experience is 'the name men give to their mistakes'. For many centuries there had been no mistakes made about a *Völkerwanderung*, or about an 'Industrial Revolution'. Even egalitarianism and humanitarianism had been so long out of fashion that round about 1800 they might fairly be called new ideas. Under such conditions, it was the men of sober judgement who tended to become bewildered pessimists, and the men of crude imagination and young inventive minds who felt at home. 'Le simplisme', Halévy says, is the characteristic of nineteenth-century English thought: it was an age of pleasant dreams and horrid nightmares, of facile

generalizations and clever dodges and brand-new panaceas, of 'iron laws' and 'mysterious alchemy', of pan-opticons and malthusianism, of the 'felicific calculus' and the workhouse test, of the noble savage and the mobile labourer. Englishmen may pride themselves on their immunity from the vice of theorizing, or blame themselves for their habit of working by rule of thumb, but an Englishman who does not understand the facts of a situation is just as liable as any one else to grasp at some specious explanation of them, and is more likely than less 'practical' people to act upon that explanation with disastrous promptitude. The diggers upon St. George's Hill were just as English as Cromwell, but they did not know the country well enough to tell a short cut from a blind alley, and if the chaos of the Interregnum produced a rare crop of faddists and quacks, so did the chaos of the Industrial Revolution.

Thus we may expect strange doings in and around Downing Street and over its thirty-odd dependencies, scattered over both hemispheres, and occupied by a score of different races whose mother tongue might be anything from Dutch, French, or Spanish to Chinese, Bantu, or Malayan. Unprecedented emigration, unprecedented economic conditions, a newly roused social conscience, a colonial nationalism with its roots in the remote past, but drawing new inspiration from current political and social dogma, and 'le simplisme' everywhere rampant—such were some of the conditions under which Government at a Distance had to be carried on. Thirty years of wrangling, mountains of correspondence, oceans of speeches, and many a clumsy experiment produced three momentous results. Slavery and transportation were abolished and the mostly unforeseen economic and social consequences were faced. Commerce was unshackled and the Empire ceased even to pretend to be an economic unit. Colonial nationalism as a goal was recognized, and the larger units under the Crown, in which the white race was in a majority, were given full responsibility for the conduct of their own affairs. Thus a new relationship was set up, firstly between the dominant and the subject races under the flag, and secondly between the mother country and the colonist. It is with the painful elaboration of these new relationships that this book is concerned, and any light which it may shed on their working at least comes directly from the actual words of some of the actors in the drama.

2. THE MEN

If such was the tide in the affairs of men, what of the men themselves whose business it was to take it at the flood? Not, one must admit, a very promising lot. Trained minds, inheritors of wide culture and great traditions, men of high intelligence and vigorous character in combination, are seldom attracted to the beginnings of great movements. They see the goal of their ambitions along the beaten track and in pursuit of the recognized prizes. It argues a very unhealthy condition of society if men of commanding gifts cannot find scope for them without wandering from the highway. The leaders of the Italian Renaissance did not become heretics; for all their passion for novelty, there were too many other careers open to their talents. In early nineteenth-century England, with the topics of the Tamworth Manifesto and the activities of Metternich occupying the foreground, there had to be something queer about a man who developed a passion for 'those wretched colonies'.

No doubt there will always be men of the first rank of ability who have a knack of getting at odds with their surroundings, as Luther insisted on becoming a monk and then wanted to destroy monasticism because it was not what he expected, or as Francis Place, with all his contempt for the average man, gave up to championing that irritating and flaccid person's interests talents which would have made him a king among breeches-makers. Wilberforce had streaks of first-rate quality about him and might have been a member of many cabinets. But Wilberforce, like Macaulay, was one of those men who cannot in the long run stand the rough and tumble of association on equal terms with men of their own calibre: there was a trace of the fear of life in his absorption in the Slavery Question, just as there was in Macaulay's absorption in his *History*. And, almost without exception, the statesmen and administrators and officials and politicians and theorists and adventurers who wrestled with what were after all formidable difficulties and supremely important questions were either second-rate people, or first-rate people with a kink or a disability, or again with so many other things to think of that they only had a fraction of their minds and time to spare for the colonies. Perhaps the one exception is Elgin, and he was that most unlucky of individuals, the inheritor in youth of a Scottish peerage, and so debarred from both Houses of Parliament at the opening of a promising political career. Durham was an impossible colleague and was only five months in Canada. Grey was a cantankerous doctrinaire. His namesake of the South Seas began life as the only son of a widow,

and never learnt to suffer his equals gladly or to work in harness. Wakefield never quite knew the difference between right and wrong. Buller's cleverness and Molesworth's rather sententious eloquence were not balanced by enough administrative experience: Buller died too soon and Molesworth lacked the qualities to do much more than point out other people's mistakes. Stephen was a man with a mission and 'without a skin'; Stanley scarcely bothered to disguise his contempt for colonial manners, and Russell with all his acuteness never really got inside the minds of his countrymen overseas and was often more pointed than wise. If either Glenelg or D'Urban had had more judgement and independence of mind, their unhappy misunderstanding might well never have arisen. Metcalfe was too old and rigid in mind to see what wanted doing in Canada; Sydenham, with all his ability, too clever and conceited to do more there than stop a gap. Sir Harry Smith was a dashing soldier and a magnetic person—a knight-errant born five centuries too late. Robert Lowe's incisive tongue and mind were the servants of his ambition rather than of a genuine desire to get at the truth, and it was fortunate for him that what he said in Australia was not much read in England. Men like Henry Taylor and Merivale and Elliot among the Downing Street officials at home, or colonial officials abroad like Montagu or Shepstone, and colonial statesmen of the first generation like Baldwin, Joseph Howe, Wentworth, and Francis Hincks, and colonial governors like Lord Harris, Sir Lionel Smith, Barkly, and Gipps, had often more than their share of common sense, insight, and leadership, but very inadequate means of bringing their qualities to bear; they were often debarred, too, by their position from seeing things in all their implications. And the colonists generally—debt-burdened planters and Zulu-harried farmers, and noisy Sydney democrats and race-conscious French and British Canadians—were no more capable of taking a broad view of their own grievances than were the champions at home of negro industry, or of missionary zeal, or of the merits of aristocracy and church establishment, likely to condone the colonial failure to appreciate these blessings. Under the circumstances, it is surprising that any one ever did anything right. It was admittedly in a more than usually pessimistic mood that the future Marquis of Salisbury visited the southern hemisphere on a voyage to recover his health. But much reading of colonial dispatches confirms the accuracy of his impression of colonial opinion when he writes, in 1852:

'I am not much disposed to yield to popular clamour, but the din of indignation against Downing Street is so bad and so incessant that I

cannot help thinking there must be something in it. People are apt to be riled at having their minutest affairs . . . settled for them at a distance of 16,000 miles by a staff of clerks who cannot have the faintest notion of the questions they are handling. From the Cape to New Zealand, from bishop to pot boy, the cry is everywhere the same. And the worst part of the policy is that we get nothing by it. . . . We alienate the colonies and harass every ministry with the solution of a set of impossible problems, in order that we may have the exquisite privilege of supporting some thirty useless clerks.'

A melancholy comment to be made at the end of the administration of the best-informed and most competent colonial secretary of the time.

But if the history of colonial administration in this period does not record the carrying to a brilliant climax of a coherent policy, it is none the less English for that, and perhaps its ultimate results were the more solid. If no one great man arose to control events, the struggles and conflicts of many lesser figures gave scope to the crude energy of a very vigorous time. Elgin, the most gifted of all, showed his greatness more by what he refrained from doing than by what he did—a more masterful (and therefore necessarily more egotistical) man might in his position have failed disastrously. Like all his fellows, he was powerless to stem the tide; it was enough that, like the best of them, he kept his head clear and his limbs free as it swept him on, and so helped to make it possible for later generations to turn its waters to their purposes, and to labour that it should fertilize, not merely submerge, the great areas over which it swept. We hardly know yet what we owe to the men who were not caught napping when 'through creeks and inlets making, came silent, flooding in, the main'.

3. STEPHEN

The thirty useless clerks, for instance, were not as useless as Lord Robert Cecil and his bishops and potboys thought they were. In 1852 Sir James Stephen was no longer among them; till his death in 1859 he was still consulted on colonial questions, but he had resigned his post as Permanent Under-Secretary in 1847. As the real founder of Colonial Office methods and traditions, however, he had done work which has long outlived him. This book will fail in one of its main purposes if it does not make clear the wisdom, the knowledge, the essential righteousness of Stephen. He was among the greatest of that great series of Civil Servants which forms one of the chief glories of nineteenth-century England. With Lord Grey and Wakefield to stand for the other two, he may be taken as repre-

senting at its best one of the three main sections of home opinion and method in relation to the colonies.

Stephen's connection with the Colonial Office began in 1813 when, as a rising young barrister, he became Counsel to the Colonial Department. From 1834 to 1836 he was Assistant Under-Secretary and from 1836 to 1847 Permanent Under-Secretary. His point of view was that of a clear-headed lawyer, a keen student of history (in which he was to do work of rare distinction), and a cautious administrator, who had been born and bred an evangelical. His father (who was born within a few months of Wilberforce, outlived him by less than a year, and married his sister as his second wife) was a pillar of the Clapham Sect, and a man of intense feeling, the passion of whose life was a hatred of slavery. He had seen it at close quarters as a young man in the island of St. Kitts. 'I would rather', he once said, 'be on good terms with a man who had strangled my infant son than support an administration guilty of slackness in suppressing the slave trade.' Like the young Macaulay, young Stephen was brought up in the intense and narrow circle of 'the Saints', who felt about negroes and planters as the Covenanters felt about the Elect and the Episcopalians. It was the tension of this early environment which gave Macaulay a permanent shrinking from depth of religious feeling, a refusal to attempt to probe or understand it, and made him, gentle and sensitive person that he was, the trumpet of Victorian complacency and materialism. It had a different but an equally profound effect on Stephen. In spite of great mental distinction and inherited energy of character, he never freed himself from his father's influence, and never ceased to be in part the echo of the opinions of an older generation: to remain immersed in a coterie from which Macaulay tactfully extricated himself. So he never became what his power of work, his strength of purpose, and his vigorous intelligence suggests that he might have been, and early buried himself in the Colonial Office as other such men have buried themselves in academic life, or literature or scholarship, leaving to men of tougher fibre the responsibilities and the prizes of public life. It was his wife, on whose cheerfulness and serenity he leaned for nearly half a century, who called him a man without a skin. His son describes him as 'a sensitive plant grafted on a Norwegian pine'. Taylor says he was as shy as a wild duck. He was the most ample and incisive of talkers, but his volubility was stimulated by this shyness and concealed, instead of revealing, his real self: he lived behind a wall of reserve. Behind that wall there was rare nobility of character, humility, humour, an exacting conscience, pride, and self-reliance, but there were also

traces of a morbid scrupulosity and asceticism which makes one doubt his judgement on subjects on which he felt deeply. It is said that he enjoyed his first cigar so much that he never allowed himself to smoke another. He had a terror that his children would grow up indifferent to religion, that a chance word of his might mislead them or others as to his own beliefs, and it seems that his own faith only maintained itself with difficulty against a sceptical intellect. A friend called him 'a transcendental Quaker with a tendency to Popery', and his daughter detected in him 'an almost wistful sympathy with the religious experience of devout Roman Catholics'. No one can read his *Essays in Ecclesiastical Biography* without appreciating the delicate but affectionate irony of his descriptions of evangelical enthusiasms, or the warm if critical admiration that he felt for the founder of the Jesuits. He was carried on as far in manhood as was J. S. Mill from the confident and obstinate certainty which had been imposed on him in his childhood, but, like Mill, he lacked perhaps all through mature life the complete freedom and independence of mind which comes from being able to examine with detachment one's own early opinions and impressions. Where negroes, natives, and missionaries were concerned, his mind was more than half made up before he had examined the evidence. On most other subjects with which his duties brought him into contact no one could have taken more pains or been better qualified to arrive at a sane judgement: for expert knowledge with him was backed by an historian's breadth of view and the impartiality of a just man without personal vanity or ambition. He was both wise and liberal, humorous and patient, and can easily be recognized as the ablest, most laborious, and best qualified man in the infant Civil Service of his day.

It was primarily to carry on the family vendetta against slavery that he first took service, at a sacrifice both of income and prospects, under the Colonial Office. If the growth of population was the most signal 'act of God' in the nineteenth century, the abolition of slavery by the Act of 1834 was perhaps the most important human achievement; for without it there would have been a canker in the bud of the new British Empire. It may be that the British salved their consciences at the expense of the West Indians, and found more consolation than they were entitled to in the contemplation of trans-Atlantic wickedness. The Whigs, like most reformers, tended to concentrate their zeal on abuses which brought profit to other people and inconvenience to themselves: the Tories owned most of the pocket boroughs, the new Poor Law relieved the rates, and the Reform Act deprived the sugar interests of much of their voting

power in Parliament. The abolitionists, too, were some of them as convinced as the West Indians that the defects in the system from which they themselves derived their incomes were inevitable in an imperfect world. Wilberforce, who made for himself so vivid a picture of the inside of a slaver, took less interest in what went on at the bottom of a mine shaft, just as Fowell Buxton no doubt appreciated Dr. Philip more than he would have done had that friend of the Kaffirs been a temperance reformer of equal zeal. Nevertheless, the energy of the abolitionists, backed by the eloquence of an active Parliamentary majority, did destroy a relationship between two sets of subjects of the Crown, which if it had continued to be recognized would have poisoned the blood of the largest and most diversified political association in history. Stephen may have been something of a fanatic, though like Cromwell he suffered much from the 'fools' of his own side as well as from the 'knaves' of the other, and saw as far as did 'old Noll' himself beyond the narrow horizon of sectarianism. But it was he who rooted and grounded in the Colonial Office a tradition of watchful guardianship of the weak: he was one of the fathers of trusteeship.

Henry Taylor, perhaps the ablest of his subordinates, has left a lively account of the main task to which Stephen and he devoted themselves from about 1825, when Taylor had just entered the office and Stephen had just become Permanent Counsel to it—of how, with Lord Liverpool's well-intentioned but timid government in the position of mediator between the Saints and the planters, the controversy between two sets of implacable opponents went on year after year—'the Assemblies raged abroad, the Saints wailed and howled at home'; but the Colonial Office, knowing well what it was about, set up protectors of slaves in the few colonies in which the Crown had legislative power:

'they made their half-yearly reports in which every outrage and enormity perpetrated on the slaves was duly detailed, with the usual result of trials and acquittals by colonial juries, and perhaps a banquet given by the principal colonists in honour of the offenders; we wrote despatches in answer, careful and cautious in their tone, but distinctly marking each atrocity, and bringing its salient points into the light; we laid the reports and despatches before Parliament as they were received and written; Zachary Macaulay forthwith transferred them to the pages of his *Monthly Anti-Slavery Reporter*, by which they were circulated far and wide through the country; the howlings and wailings of the Saints were seen to be supported by unquestionable facts officially authenticated; the cry of the country for the abolition of slavery waxed louder every year. . . .'

It was the carrying on of this thoroughly congenial work which helped to earn for Stephen and Taylor the reputation, not undeserved, of 'running' the amiable if nepotistic Lord Bathurst (himself not without evangelical leanings) and his transient successors as Secretary of State for War and the Colonies. In the particular form here described this work ceased with the advent of the Whigs and the passing of the Abolition Act. The drafting of this Act, substantially as it became law, in sixty-six sections covering twenty-six pages of the Statute Book, between noon on a Saturday and noon on a Monday, was one of Stephen's most remarkable achievements (and one of the only two occasions in his life on which he broke the Sabbath), but it neither represented in full his own ideas of the way to deal with slavery (he would have abolished it forthwith, without the period of apprenticeship), nor did its enactment convince him and his colleagues that they could relax their vigilance in those many parts of the Empire in which there were natives, or apprentices, or liberated slaves to be protected.

Stephen, in fact, saw the Empire almost wholly as a liability. It was a trust which it might be inconvenient and difficult for the Mother Country to administer, but which it would be wrong to repudiate. As he wrote in a private letter two years after his retirement, 'England ought never to give up a single colony:—the course taken in Canada was the only right course. It was that of cheerfully relaxing, one after another, the bonds of authority, as soon as the colony itself clearly desired that relaxation . . . so substituting a federal for a colonial relation—no national pride wounded, or national greatness diminished, or national duty abandoned. It remains for the Canadians to cut to the last cable which anchors them to us. But it is for them, not for us, to take that step and to assume the consequent responsibility. The same process is in progress in the Australian colonies. The rest are unfit for it—detached islands with heterogeneous populations—wretched burdens which in an evil hour we assumed and have no right to lay down again.' Among the 'wretched burdens' are obviously to be included South Africa, and perhaps New Zealand. At all events, the emphasis is always on responsibility and its cheerful transference or conscientious discharge.

This point of view accounts for Stephen's much-criticized attitude during the period immediately following emancipation, when Lord Glenelg was at the Colonial Office. Lord Glenelg was the son of the elder Stephen's old ally, Charles Grant of the East India Company, another staunch member of the Clapham Sect. Taylor admits him to have been, though amiable, 'exceedingly and habitually averse

from strong measures and incurably sluggish and somnolent'. Yet when he resigned he was proclaimed by Stephen as 'the most laborious, the most conscientious and the most enlightened' of the Secretaries of State under whom Stephen had then served. The list of Glenelg's predecessors, Bathurst, Robinson, Huskisson, Murray, Stanley, Spring Rice, and Aberdeen, has only to be enumerated to deprive this encomium of a good deal of its force, and Stephen was hardly the man to appreciate the merits of Stanley. But to put Glenelg above Huskisson, and indeed anywhere but among the most ineffective of the office-holders of his day, is a startling departure from the opinion current at the time. Those who knew that such was Stephen's opinion no doubt explained it as the verdict of a vigorous bureaucrat on a chief who did as he was told. Stephen certainly agreed with Glenelg in his repudiation of D'Urban's South African policy. Like Glenelg, he was on the Committee of the Church Missionary Society, whose lay secretary since 1830 was Danderson Coates, the energetic enemy of the New Zealand Association. Though Stephen was not the inveterate opponent of that Association as which he is sometimes represented—he was certainly sympathetic in the earlier stages of its history—he remarked as early as 1837 that the acquisition of sovereignty in New Zealand 'would infallibly issue in the conquest and extermination of the present inhabitants'. It was in Glenelg's time that the open conflict between the systematic colonies and the Colonial Office broke out, and that Stephen seems to have made up his mind that Wakefield was an irresponsible intriguer, whose financial optimism and resourcefulness made him dangerous. Hence his reputation as the archetype of 'Mr. Mother Country', the obstructionist devotee of a system of dilatory routine whose very efficiency was an obstacle to the forward movement in colonial affairs. Stephen was the last man to hold up the dispatch of business: no man fought harder against the system of 'circumlocution' which made it necessary to refer colonial business to a number of government departments, any one of which might pigeon-hole it indefinitely, and few of the colonial reformers themselves were as ready as he was to allow the colonies to make their own mistakes. As he once told Fowell Buxton, he was 'thankful for the many opportunities' which had come his way of 'mitigating' if not of preventing the 'cruel wrongs' which his country had 'inflicted on so great a portion of the human race'; his attitude towards missionaries and the activities of religious organizations was perhaps unduly sympathetic, even the great work he did in preparing the way for responsible government in Canada is perhaps open to the

reproach of lack of faith in colonial loyalty, the more blatant side of colonial democracy sometimes made him wince; like so many of his contemporaries he looks forward to eventual separation as inevitable. But at least he was no partisan of the retention at all costs of Colonial Office tutelage, and what his enemies saw as a morbid love of power in an obscure official was really the conscientiousness of a scholarly thinker, who knew far more about the colonies than did his chiefs and far more about affairs than did the colonists.

His views were largely shared by both Taylor and by his own two successors as Permanent Under-Secretary, Merivale and Rogers (afterwards Lord Blachford). All three have left on record their willingness to see the responsibly-governed colonies rise to the full status of national autonomy: Merivale with a lively belief in their continued loyalty to the Crown, Taylor with the conviction, expressed as lately as 1860, that Canada was a *damnosa hereditas* and 'had better be given every chance of slipping away altogether', Rogers with the doubt, as he once told Gladstone, whether 'any country could be for any long time safely and honourably governed in which an aristocracy more or less hereditary was not a leading element'. As regards native policy, too, both Merivale and Rogers took a line which was really an adaptation of that of Stephen to meet changed circumstances. Merivale with obvious misgivings has to admit by 1860 that 'though it cannot be doubted that a consistent and regulated system by the home executive would be better, as regards justice to the natives, than the arbitrary will of the settlers', yet that 'the establishment on a firm basis of either system, that of home control, or that of abandonment to the settlers, requires a degree of consistent firmness, which it is difficult to secure under constitutional governments', and that 'it is impracticable to suggest the establishment in the same colony of responsible government for the settler, and a separate administration of native affairs under the Home authorities'. The only alternative, then, is the assumption by the colony of responsibility for native policy. Similarly, after his retirement in 1871 Rogers explained, in a fragment of autobiography, how at the Cape it had been possible to control native policy very efficiently from home as long as the settlers were dependent on the Home Government for protection against the natives, and responsible government had not been granted. When once, however, New Zealand had become self-governing, 'I at once made up my mind that there would be no quiet for ourselves or safety for the natives, until our troops were recalled and the colonists forced to rely on their own resources, and to try mild and just methods rather than violent ones'. The idea of trustee-

ship remains, though the best method of securing its effective discharge has come to be, in certain cases, a change of trustee. That the grant of responsible government means such a change is a fact which had to be faced then, and has still to be faced now.

Thus Stephen, and those who carried on his work, transmitted to another age the old evangelical attitude towards the Empire, modified by their long experience of administration. The evangelicals had continued to believe in the Empire as a unit in the darkest days of depression after the Declaration of Independence, for if the colonies were millstones and Empire a *damnosa hereditas* and the colonial system based on economic fallacies, it was also a trust, a field for missionary enterprise, and an opportunity for rebuking sin. If it became increasingly difficult to regard the Empire as an asset, it became all the clearer that it was a liability. As Merivale says, the colonies were to be retained for 'the pleasure of governing them'. The Colonial Office appreciated that pleasure a good deal less than did the amateurs of Exeter Hall—they knew too much about it. But they also knew that the only way to get the murder of an Australian black fellow treated as anything but a mild form of big-game shooting, and the flogging of negro women as anything but a necessary item in the routine of sugar production, was to bring home opinion to bear. They found it difficult to regard the Empire as an asset, partly because they had to justify to the Treasury and the Public the expense of colonial wars, partly because the evidences of colonial political vitality so often took the form of ignorant abuse of the Colonial Office. They gradually realized that even in the field of native policy, the only plan was often to allow the colonists to make their own mistakes. But, who shall say that the long rearguard action that they fought for home control of native policy, or their somewhat melancholy acquiescence in the growth of colonial autonomy, were without their value to the future? Like good parents, they were prepared to let the children play with most things except fire, and if they were often shocked and grieved at the antics of the nursery, they did their best to control their feelings in the hope that troublesome boys would grow up eventually into sensible men. The parental relationship is never easy to keep on the right lines; of them may be said what Henri IV said of Catherine de Medici: 'Ayant par la mort de son mary cinq petits enfants sur les bras . . . je m'estonne qu'elle n'a encore faiet pis.'

4. WAKEFIELD

Over against the champions of the idea of Empire as a complex of responsibilities, were ranged at home the representatives of the other great body of ideas which competed with the evangelicals for popular support—the utilitarians. Much as, on a more heroic scale, Strafford's plans for the Rule of Thorough confronted Cromwell's ideal of the Rule of the Saints, so did Wakefield's plans confront the beliefs of Stephen, and Englishmen now, as so often before and since, were offered a choice between good business and idealism, between what one side might be said in modern slang to regard as the schemes of 'crooks', and what the other side in the same idiom would call the fads of 'cranks'. Wakefield was the chosen champion of those who regarded the Empire primarily as an asset, and the contrast between Stephen and him begins on the surface and goes down to the roots of their two natures.

Wakefield, born in 1790, was three years Stephen's senior—the son of an educational and statistical enthusiast who was a disciple of Jeremy Bentham, and the grandson and pupil of a lady who was first cousin to Elizabeth Fry, and won fame as the advocate of savings-banks. A militarist, therefore, from his birth, Wakefield, like Stephen, retained all through life many of the characteristics of his heredity and environment, but his first plunge into life was very different from Stephen's. The year after the latter had married the daughter of the Rector of Clapham, already known as one of the founders of the Church Missionary Society, Wakefield eloped with a young lady of means who was a ward in Chancery, married her at Gretna Green, and, after successfully combating the Lord Chancellor's attempt to declare the marriage void, took up minor diplomatic work abroad. In 1820, shortly after Stephen became Permanent Counsel to the Colonial Office, Wakefield, whose wife had been dead some six years, repeated his experiment in matrimonial adventure, this time by abducting a schoolgirl from Macclesfield, was arrested, and sentenced to three years' imprisonment in Newgate. It was in consequence of this event, oddly enough, that his career and Stephen's began to converge, for, when he found himself in prison, Wakefield was led to develop an interest in the questions of emigration and transportation, partly no doubt because they were current topics among his companions in misfortune, partly because his own future at home was obviously doubtful. In 1822 he published in the *Morning Chronicle* the famous 'Letter from Sydney', actually written in Newgate. So began a career of singular activity and influence.

No one could have achieved such a career against such handicaps without some of the qualities which Stephen conspicuously lacked. There was nothing of the recluse, of the 'man without a skin', about Wakefield; his strength lay in his robust if limited common sense, his cheerful vulgarity and pugnacity, his faculty for observation and invention, his quickness of sympathy, his energy and persuasiveness. No man suffered less from the pale cast of thought which made Stephen something of a sceptic about human nature and human enterprises. A shy man would have wilted under Wakefield's misfortunes, a scrupulous man would not have fallen into them. It was not these misfortunes alone which condemned him to work so much underground and behind the scenes, so that like Stephen he shunned the highway of political activity, and it may be doubted whether he, the scapegrace utilitarian, was really fitter for public life than the self-distrustful evangelical. His spirited revolt against his upbringing saved him from inherited opinions, but left him with a liking for short cuts and adroit manœuvres, an instinct against committing himself too far, or admitting himself to have been mistaken, and for keeping open a line of retreat. For all his aggressiveness he was stronger in criticism than in construction: the role that suited him best was that of the clever man wringing his hands over well-laid schemes sent agley by knaves and fools.

Wakefield emerged from Newgate at a time when the great sect into which he had been born was undergoing one of its many transformations. In an earlier phase, as when Bentham published his *Fragment on Government* in the same year as that in which the Americans issued their Declaration of Independence and Adam Smith his *Wealth of Nations*, the utilitarians had helped to strengthen the attitude of pessimism in regard to colonial adventures which economic theories and political events alike suggested. Bentham was to urge the French and the Spaniards to 'emancipate their colonies' on the same economic grounds as those on which Adam Smith had urged Great Britain to 'part friends' with hers, and on political grounds he could only, as his views became more and more sympathetic towards radicalism and self-government, see in the colonial system a preserve of aristocratic privilege and dictation. Government from a distance was bound to mean government in the interests of the few, and James Mill heads one section of his article on 'Colonies' for the *Encyclopaedia Britannica*, "Tendency of Colonial possessions to produce or prolong bad Government". But already before Bentham's death there were signs of a change in his own point of view, though it was not shared by his more orthodox disciples. It is curious

to observe how an interest in the affairs of India influenced both utilitarians and evangelicals in the early years of the nineteenth century. Several of the *élite* of Clapham Common had large East Indian interests, and perhaps their detestation of West Indian slavery was sharpened by a sense of the unfair discrimination of the sugar duties in favour of the West Indies and against the growing sugar plantations of India. For different reasons, Bentham had long recognized the importance of India, and when James Mill became an important official in the East India Company (he was made Assistant Examiner of East Indian Correspondence in 1819), opportunities were revealed for bringing utilitarian influence to bear on a territory which already contained sixty million inhabitants. In his earlier phase, Bentham had hoped to inspire benevolent despots in Europe—why should he not become the legislator of India, and there inaugurate a programme of reform and codification, to which the way was obstructed at home. In 1827 Bentinck on his departure to India had told the sage ‘I am going to India, but I shall not be governor-general. It is you who will be governor-general.’ And if India might provide an opening for Benthamite law-makers, other areas under British rule might give similar scope, with the additional advantage that, if fit for white settlement, they might provide a remedy for the pressure of population on the means of subsistence. This menace to well-being had begun to haunt the utilitarians, as the census figures of each decade reinforced the arguments of Malthus’s lugubrious *Essay on Population* published in 1798. The colonies, Adam Smith had announced, had the advantage of ‘plenty of good land’, the home country had an overstocked labour market, and until the working classes could be induced, as Francis Place urged them to do, voluntarily to control their own birth-rate, a palliative might be found in schemes of emigration. In 1829 Bentham admitted that ‘as a citizen of the British Empire he had given favourable attention’ to the scheme, promoted by the emigration enthusiasts of the day, for the creation of a colony on the Swan River in Australia. The calamitous failure of that colony led him a step farther, and the aged gentleman actually drew up in 1831 the heads of a Proposal for the Foundation of a Joint Stock Company on an entirely new principle entitled ‘The Vicinity Maximising or Dispersion-Prevention Principle’ for the establishment of a settlement in South Australia. The names he himself suggested for the proposed colony were Liberia, Felicitanian, or Felicia. Thus the ‘greatest happiness principle’ was to take fresh root in the Antipodes.

Meanwhile the Colonial Office, which Wakefield had approached

in July 1829 by sending it his first pamphlet (published under another name), *The Sketch of a Proposal for Colonizing Australia*, had also begun to pay attention to the 'entirely new principle'. In January 1831 Howick, the energetic young Whig Under-Secretary, induced Lord Goderich to issue those 'Instructions to the Governors of New South Wales, Van Diemen's Land, and Western Australia' which changed at a stroke the land-settlement policy of the Imperial Government. In September, on discovering Wakefield's identity, Howick wrote him a friendly letter asking him to put forward his view in writing for the consideration of 'the Government and assuring him that they would receive 'the attention to which they were so well entitled'. Soon afterwards J. S. Mill, aged twenty-five and now in the van of the Utilitarian movement, first met Stephen and was so much impressed by him that he wrote, 'If all the English Evangelicals were like him, I think I should attend their Exeter Hall meetings myself and subscribe to their societies', and added in the same letter that the South Australian colonization scheme 'is going on prosperously' and Wakefield 'now moves openly in the thing'. Says Merivale, as if to meet the 'new generation of Sceptics', there had suddenly arisen 'the young and sanguine sect of colonial reformers', 'bold, far-seeing innovators', whose views he goes on to summarize as follows:

'These contemplated a reconstruction and great extension of the British dominions beyond the seas, on principles of internal self-government and commercial freedom. But these were to be combined with the maintenance of a fixed system of disposal of colonial lands, and application of the land fund to the purpose of procuring labouring emigrants from home. In this manner they believed that capital and labour might be imported into new colonies in the best proportions; and that communities might thus be founded which should possess at once some of the more valuable characteristics of advanced and well-regulated societies.'

Wakefield was not the first man to see the sufficiently obvious evils of large free grants of land to people who had not the will, the labour, nor the capital to develop them. In Australia and Canada only the wilfully blind could remain ignorant of these evils for a week. He was not the first to see that the kind of work that convicts did in Australia was essential if the country was to be rapidly developed, and that if it could be done by free instead of forced labour the only losers by the arrangement would be those who had to arrange and finance another method of dealing with crime. He was not the first to suggest ways in which emigration might be assisted and its methods

improved. But, as a friend said of him, 'he was a master in the art of persuading' and 'seldom failed if he could get his victim into conversation'. And he was almost equally effective on paper. He had to perfection the art of using illustrative detail to support his conclusions, and his accuracy of observation in small things lent a rare appearance of plausibility to large conclusions. Being by nature both ingenious and sanguine, both public-spirited in aim and unscrupulous as to means, he was equally well fitted to supply ideas to men of importance and energy to men of ideas. The ideas were many of them crude and some mutually contradictory. The energy was often misdirected, and the gift of persuasion was balanced by an almost equal faculty for squabbling. He was one of those men whose friends always disappoint them sooner or later. But it is none the less true that at home, in Canada, and in the South Seas, Wakefield and his allies exercised in their generation a great and vitalizing influence.

Wakefield's panacea of a 'sufficient price for land' suffered, as has often been pointed out, from the drawback that the important word 'sufficient' was never defined. The very limited sphere in which his self-acting plan could hope for success was politely but ruthlessly delimited by Merivale, who showed conclusively why the small settler using his own and his family's labour was the man to clear the forests of Canada, though the open land of Australia might need the convict or the wage-earning labourer. The colonists, whose right to manage their own affairs he had so vociferously demanded, under the impression that they would grasp the merits of his 'self-regulating scheme', invariably repudiated it, usually with a promptitude and vigour far surpassing that of 'Mr. Mother Country' at his most obtuse and obstructive. In so far as he supplied ideas for Lord Durham's Report, it is clear that they were anticipated, if not suggested to him, by Baldwin. On the subjects of sales by auction and the use of the proceeds of land sales exclusively to finance emigration, he completely changed his views without ceasing to vituperate his opponents for failing to perceive self-evident propositions. It seems clear that he was above yielding to the temptations of the fraudulent company promoter; what he wanted was not money but influence, his egoism took the form of restless self-assertion, not of greed; but the economic side of his projects was inspired by such confident optimism and such a disregard of detail that there were certainly some grounds for Stephen's suspicions of his trustworthiness as a financier. He never quite faced the effect on his theories of one of the leading characteristics of the new countries of which he claimed such intimate

understanding, their zealous and profound egalitarian and democratic sentiment: he hoped to see in them a reproduction of the social hierarchy of the old country, and though he lived among them, he never perhaps quite understood how nearly whole-hearted was their repudiation of that ideal.

Still, in his crude way he did see, and in his strident voice proclaim, the great fact of the ages, the movement of the peoples of Europe to new homes overseas. His unscrupulous and restless egoism sublimated itself in his eagerness to direct and assist that movement. With a peculiar vividness, born of genuine sympathy, he saw the human detail of the great migration: the tears of the old parents left at home, the emigrant's supreme need of a good wife, how troublesome the children were on the voyage, how the very criminals who were supposed to fear transportation worse than death were caught by the infection of hope from the idea of a new world; and better, wiser, and more cultured men admitted, with a candour which does them honour, that his faith made him their master.

5. GREY

In status at least, above the official and the propagandist stood the statesman. The one parliamentary figure who deserves a place with Stephen and Wakefield is the third Earl Grey. For he, too, was a man of faith. Grey drew from the austere doctrines of Free Trade—a kind of economic Calvinism—and the arid regions of political economy something of the same inspiration as Stephen fashioned out of inherited evangelicalism and Wakefield out of Benthamite orthodoxy.

Grey was not of the stature of any of his three immediate predecessors as Secretary of State, Russell, Stanley, and Gladstone; he had neither their distinction of mind and style nor their breadth, and the physique of Stanley and of Gladstone gave them in their very different styles a formidable virility which he could not begin to emulate. On the other hand, his knowledge of and interest in colonial questions was as superior to theirs as was his energy and ability to that of Goderich, Murray, Glenelg, Pakington, or Newcastle. Both as Under-Secretary at the beginning of the period and as Secretary towards its end, he took a bold and vigorous line; throughout its whole length, and for many later years, he maintained a continuous and active interest in colonial questions. The eldest son of the handsome dilettante and dexterous parliamentarian who carried the first Reform Bill, Grey had an irritable edge to his character which was perhaps accentuated by the physical deformity of a slight curvature

of the spine and by the childlessness of his marriage. He had a way of disapproving of other people and of their habits and remarks in a rather acid manner, and so effectually disguised a sensitively affectionate nature. The enormous family which grew up together at Howick, and called their parents by their Christian names, stuck firmly to one another all through life, but were not accustomed to conceal their views on each other's little defects. When young Howick thought his father was spending too much money on pictures and terraces and not enough on marriage portions, or when, later on, his brothers and sisters seemed to him less respectful than they should have been to the head of the family, he said so rather tartly. This kind of thing is understood and discounted easily enough within the family circle, and Henry as a son, a brother, an uncle, and even as a great-uncle (he died in his ninety-third year) was known to be thoroughly staunch and much more reasonable than he sounded. His diary, which his wife kept for him when he was too busy to do it himself, is a perfectly unself-conscious record of mutual devotion and considerateness. Maria, too, could be censorious, but she kept her talent for Henry's critics.

But a reputation for cantankerousness is a bad handicap even after such a flying start as the heir of the Reformer (a family man if ever there was one) was certain to have. When the Whigs came in, young Howick, still in the early twenties, had only to understudy his father's methods to find himself in the front rank of the rising generation: to be tactful, rather elegant and detached, willing to wait for the tide to set in really strongly before he took to the water, and nothing could have stopped him. Instead, he carried into politics the attitude of the conscientious eldest brother, got down to his subject, read and thought and learnt all he possibly could about it, and soon knew far more and had formed much more definite opinions than his superior at the Colonial Office, that embarrassed nonentity Goderich, or than Goderich's successor, the brilliant and dictatorial Stanley. Very soon he had stamped himself as a young man in a hurry, with too many principles, too quick a mind, and too sharp a tongue to make an agreeable colleague in a government of impressive, well-intentioned, but inwardly rather bewildered amateurs. How different from Palmerston! Pam knew as much about Foreign Affairs as Howick thought he did about the colonies; Pam was no longer young and had never been in a hurry; Pam had long known that it does not pay to be offensive till you can snub as well as instruct. But Howick was really much more eager to learn than to teach. Many years later, in 1847, the Prince Consort wrote to Stockmar that he did not

find Lord Grey (as he then was) 'intractable upon great political questions'. 'Not one principle contended for by him (and he has principles, which is more than can be said of all the statesmen of the day) to which I would not cheerfully subscribe. He is very positive in his views, and sticks firmly to his opinion, but he is quite open to argument, and if worsted is ready to own it at once, and to adopt the argument by which he was overthrown. "Yes, yes, I was wrong," he will say, the moment he is shown to be in error.' That was one of the irritating things about Grey. If he was always clear and definite about what he thought, and very often right, he was quite incapable of finesse when he discovered that he was wrong. Thus Greville could write in 1850: 'The House of Commons swarms with his bitter enemies, and he has very few friends. Notwithstanding his great and undeniable abilities he has committed blunders which proceed from his contempt for the opinions of others and the tenacity with which he clings to his own. While those who know him are aware that a man more high-minded, more honourable and conscientious does not exist, he has contrived to make himself pass for a minister whose word cannot be relied on.'

His first term of office showed all the qualities and all the defects which made his political career as a whole a distinguished and most creditable failure. Thoroughly characteristic was his quick grasp of Wakefield's ideas and his cordial letter to that ingenious person, who was soon to become one of his most virulent critics. Characteristic, too, that he so early grasped the nettle of the Clergy Reserves in Canada, made up his mind that they 'formed a great obstacle to the improvement and settlement of the province', and got that staunch Churchman Goderich to try in 1831, vainly as it proved, to back the Canadian opponents of the Reserves against the Family Compact. More significant still was the rapidity and clearness with which he perceived the dangers of emancipation without some attempt to ensure that the liberated negroes really would work for wages, and the promptitude with which he resigned office, when the plan he had prepared with this object in view was rejected by the Ministry, and Stanley, commissioned to prepare another, decided, equally characteristically and with the powerful backing of Stephen, to trust entirely to the temporary expedient of apprenticeship, and to leave the ultimate future to look after itself. Thus early did Howick show a readiness to adopt new ideas and a critical attitude towards both the entrenched prejudices of Anglicans and the childish optimism of Exeter Hall.

Before he got his second chance at the colonies, in 1846, he had

taken infinite pains to learn more about them, and displayed equal readiness to disagree with his colleagues. This despite the fact that for six months before Peel's first administration he was Under-Secretary for Home Affairs, and for six years Secretary at War. The fact was that, having got interested in colonial policy (and having grasped, as none of his fellows did till the Canadian Rebellion was sprung upon them, that a real policy was what was needed), he could not leave that distressing subject alone, grave of reputations as it obviously was. In 1838 Melbourne seems to have considered him for the Chancellorship of the Exchequer, for Duncannon wrote to him, 'Howick is equal to any office he undertakes, and the most indefatigable person I ever knew', but adds that as Chancellor 'he could not go on'. Actually, the whole Melbourne régime, with its easy-going cynicism, was antipathetic to Howick. His relation to it is well touched off in the anecdote retailed long afterwards by Blachford (with whom his dealings were always a little strained). In Melbourne's cabinet Howick was once 'objecting after his manner to every one's draft of a proposed despatch, and at last Lord M. pushed a paper to him and said, "Well then, in God's name, try your own hand upon it". Lord Howick wrote a sentence, then altered it, then expunged it, then crumpled up the paper and threw it down, then *da capo* with another sheet of paper, all which Lord Melbourne allowed him to do for some time without interruption, and when he came to a short pause, struck in with, "Ah, I thought so; when you have nobody to contradict but yourself you are done".'

And yet Howick was often right. He disapproved, as a convinced Free Trader and a fastidious judge of manners, of the Palmerstonian technique in foreign policy, as it was beginning to reveal itself. Its cost shocked his economic conscience; its growing popularity at home did not seem to him worth the disturbance it created abroad. He was exasperated by Glenelg's blend of idealism, indecision, and somnolence when that conscientious hope of the evangelicals succeeded Aberdeen at the Colonial Office, and gave himself, in Brougham's vicious phrase, many a sleepless *day* over Canada. He bombarded Glenelg with letters of advice and remonstrance, though he sometimes sent them to his father to see if they were too strong. He disapproved of the suspension of the Canadian Constitution before Lord Durham's mission, and found himself agreeing with Peel (as was not uncommon among Lord Melbourne's more progressive colleagues), that 'we had no interest in governing the North American colonies in a manner distasteful to themselves'. He took a strong line, too, as a member of the New Zealand Committee, refused to

support the Treaty of Waitangi, with its assumption that the whole of New Zealand was owned by the Maoris, and declared for the encouragement of the Company and of white settlement in general.

Then in 1846 he joined Lord John Russell's Administration in the office which still held the old title of Secretary of State for War and the Colonies, and was himself for six years the target of the critics.

Grey in office was neither a dilatory sentimentalist with one eye on the evangelicals, like Glenelg, nor a brusque cynic with one eye on his reputation as the 'Rupert of Debate', like Stanley. He was sustained by a really single-minded devotion to his duties: he stuck to his papers when Stanley would certainly have taken them as read and gone off to a race-meeting; sent Maria to represent him at church on Sunday, and stayed in London till the end of August, defying boils and other good reasons for retiring to Howick, and, when he did get away, carried his boxes with him for September; gave dinner parties to colonial governors and colonial reformers, and conducted, with characteristically methodical docketing and copying, an immense private correspondence with them alongside his official dispatches. He took an active part in the general business of the Cabinet, and kept a jaundiced eye on Palmerston and a critical one on Lord John, whose management of business he often thought and said was injudicious. He was not too enthusiastic about the conquests of Dalhousie in India and always ready to take up the cudgels for Free Trade anywhere and everywhere. But the colonies always came first. For all his knowledge and industry, he was always ready to take advice; Taylor says of him that he had 'more freedom from bitterness of feeling than I have met with before in any public man'; he was determined not to let Stephen's experience go to waste on his breakdown and retirement, and appreciated him and understood him far better than did Lord John, who once described him to Grey, with characteristic tartness, as Under-Secretary *against* the colonies rather than *for* them. He was only too pleased to consult the Board of Trade, whose colonial committee he revived; he stuck to Charles Buller in spite of the latter's friendship for the vitriolic Wakefield; he shook hands warmly with Sir Harry Smith when they met in London after Sir Harry's recall; he retained his admiration for the abilities of that dextrous but far-sighted person Sir George Grey, and was lavish of staunch support to his Tory kinsman-by-marriage, Elgin. For all his touchiness in private life, his didactic manner, and his jealous guardianship of the Ark of the Covenant—Free Trade—the echo of his 'Yes, yes, I was wrong' can be heard again and again in his dispatches to growling colonists and harassed governors: he never

remained cocksure in the face of the evidence, never bore a grudge when his favourite dodges were derided and his motives misrepresented, and was almost too ready to throw up a good case when his arguments failed to convince.

Who shall say that he was wrong about the advantages to Australia of federation, or about the value of experience in local government as a means of developing responsible self-government as distinct from noisy and corrupt demagoguery, or about the efficacy of a fair system of taxation as a spur to the industry of primitive peoples? He could not be brought to see the case for colonial tariffs, nor to temper the wind of Free Trade to the shorn mill-owners of Canada and planters of Jamaica, but he abolished the Navigation Laws and encouraged Elgin's struggles for reciprocity with the U.S.A. and backed his plea for Canada as a field for British capital. He was distinctly half-hearted over the shouldering of imperial responsibilities in Africa, was (reluctantly and temporarily it is true) in favour of withdrawal from the Orange River Sovereignty, just as he could not understand 'the alleged necessity of keeping the Punjaub', wanted to be rid of the Ionian Islands, and deprecated any possibility of 'getting drawn into Nicaragua'. He was perhaps too hasty and too severe in his treatment of that experienced but optimistic soldier Sir Harry Smith. He was over-ingenious (though not in fact disingenuous) as well as clumsy in his treatment of the impossibly difficult problem of transportation: he was 'got at', for lack of local knowledge, by the Australian squatters, and naïvely confident of the appeal to reason and economic law as a solace to the West Indian planter. But it is inconceivable that he could ever have written such academic nonsense as Glenleg wrote to D'Urban about the Zulus, or read such hectoring lectures as that with which Stanley drubbed the request for representative government from the Cape. Contrast his treatment of Elgin with Stanley's of Bagot; the chivalrous defence of Elgin's action on the Rebellion Losses Bill against the attacks of Gladstone and Brougham, with Stanley's grudging acceptance of the *fait accompli* from Bagot, followed by the instructions to Metcalfe to 'hold fast' at all costs to the English party. True that Stanley was by then a Tory and therefore bound to pay some attention to the groans with which the Duke of Wellington received the news that Bagot had met the 'disloyal' French Canadians half-way. But Grey, as Henry Taylor saw, understood, what Stanley did not, the meaning of chivalry to subordinates—he had real 'generosity of temper'.

So he disposed of the relics of the old colonial system, protected and abetted Elgin in his task of inaugurating real responsible govern-

ment in Canada, and encouraged the other North American colonies, Newfoundland excepted, on the same path, gave liberal constitutions to Australia, New Zealand, and South Africa, and left the Australians and New Zealanders free to modify their constitutions themselves, bore the brunt of the transportation difficulty, paved the way, unwillingly it is true, to the abandonment of an imperial land policy in the antipodes, encouraged emigration to the colonies from home, and immigration of free labour to the West Indies, and sent imperial troops to fight the battles of the settlers in New Zealand and South Africa, and imperial capital to stave off the danger of the Annexation campaign in Canada. He stood by Torrington in Ceylon and bore with Sir Harry Smith's earlier assumptions of plenary powers in South Africa. With the help of Sir George Grey, he found his way to some understanding of native policy, and saw, as Grey did not, the evils of detribalization and the need for raising the native's standard of life without destroying his standards of conduct. As he claimed in the singularly able and fair-minded defence of his policy which he wrote just after his fall, he had strengthened the Empire by removing many economic and constitutional causes of friction and vindicated its function as a source of protection to the white settlers and as a means of securing fair and wise treatment of backward races.

In 1885 Lord Blachford wrote of Grey that he was

'possessed with the idea that it was practicable to give representative institutions, and then to stop without giving responsible government—something like the English Constitution under Elizabeth and the Stuarts. He did not understand either the vigorous independence of an Anglo-Saxon community, or the weakness of an executive which represents a democracy. So events took their course and left his theories behind.'

Blachford had little liking for democratic government himself and hence overestimated its weakness as a form of government, and he can hardly have appreciated or understood what Grey did to help Elgin in Canada. But he is right in the sense that Grey fought, elsewhere than in Canada, a rearguard action which left to his successors the compliments politely paid by the colonies when the time came for the Home Country to capitulate. Pakington and Newcastle both gave way gracefully where Grey had stood firm, and were proportionately popular overseas. But whether or not Grey was right in his unwillingness to let the Southern Colonies go, as he honestly thought they were likely to go, to the devil their own way, his attempts to prevent this represent only the negative side of his policy: his positive achievement was the triumph under his régime of Free

Trade. In spite of his fondness for ingenious devices like the use of district councils as constituents, he was not a doctrinaire constitutionalist; but he was emphatically a doctrinaire free trader. As such he may be taken as the type of those who, without losing faith in the Empire as a political unit, had learnt the lesson contained in the words of Adam Smith, written three-quarters of a century earlier, and advocating 'the settling with the colonies of such a treaty of commerce as would effectually secure to us a free trade, more advantageous to the great body of the people, though less so to the merchants, than the monopoly which we at present enjoy', and reviving 'the natural affections of the colonies to the mother country which our late dissensions have perchance wellnigh extinguished'. Grey grasped, as firmly as Stephen grasped the iniquity of slavery, and Wakefield the opportunity of emigration, how fundamentally the advent of the mechanical age had changed the relations of the constituent parts of the Empire.

Merivale writes in 1840 that 'it is impossible to conceive a more direct contrast than that which exists between the British colonial policy of late years, and that of our ancestors'.

'They cared', he adds, 'for the most part little or nothing about the internal government of their colonies, and kept them in subjection in order to derive certain supposed commercial advantages from them. We give *them* commercial advantages, and tax ourselves for their benefit, in order to give them an interest in remaining under our supremacy, that we may have the pleasure of governing them.'

The old colonial system, in fact, had provided one of the few examples in English history of a coherent administrative system directed over many years towards a definite end. The end was to meet foreign competition in shipping, manufacture, and production by the creation of a self-sufficient unit held together by sea-power. The Navigation Laws forbade the carrying to British-owned ports, from Asia, Africa, or America, of any goods except in British ships, or from Europe except in the ships of the country by which the goods were produced. They were aimed at the Dutch and the Hansa carrying trade. The long list of 'enumerated articles' which could only be carried from the British colonies to Britain or her dependencies was aimed at securing to the Empire the monopoly of such of its products as were necessary for its prosperity or its safety. The high duties imposed on the products of foreign colonies and the bounties given to British colonial producers were aimed at crippling the colonial trade of Britain's European rivals and encouraging her

own. The prohibition of colonial manufactures and the prohibitive duties on foreign manufactured articles were aimed at securing for the mother country the monopoly of colonial markets for her goods. It was a system which had to cope with a great deal of smuggling, and with considerable resistance when the mother country tried to discourage, for instance, the production of tobacco, a mere luxury, as against naval stores, an imperial necessity, in the southern colonies of North America. It threatened to break down when victorious wars led to the acquisition of more sugar colonies than were needed to supply the home demand at the high price of sugar, necessitated by the sugar duties, maintained for revenue purposes at home.' But at least it satisfied the views of the time on the needs of the British community at home and overseas.

As early as 1830, however, it had become patently obsolete, and had already been shattered by the reforms of Huskisson. For, since the American War, Great Britain had established herself as easily the greatest mercantile and manufacturing country of the time. To quote Merivale again, 'Things had found of themselves that level, which those laws were intended to maintain artificially'. A great trade had sprung up with the United States, and great hopes were founded on a similar trade with the emancipated colonies of Spain. Thus it was indicated that if the remaining British colonies had been emancipated too, they would also have had recourse to the cheapest source of manufactured articles and the greatest market for raw materials. The increasing population of the home country needed cheap food, the rapidly developing manufactures demanded world-wide markets and the best and cheapest materials. The sugar duties, the timber duties, the corn laws, what remained of the navigation laws, were so many shackles on the trade of the country, and could only be defended by the sheltered interests which had grown up around them. To exclude Baltic timber for the benefit of that of North America could be stigmatized as a 'premium on dry rot', to say nothing of an encouragement to an immoral set of individuals, the North American lumbermen. Ricardo could urge the defenders of the 'long voyage' to try sailing three times round the British Isles with a Baltic cargo if they wanted to practise seamanship. There was an obvious conflict of interest between British producers and consumers in the mass, and those who benefited or thought they benefited by the remains of the old protective system. It seemed indeed as if the chief reason for the retention of the colonies was the very doubtful pleasure of governing them.

From this *reductio ad absurdum*, Free Trade offered a way out. If

it meant ruin to the sugar plantations and much searching of heart to abolitionists over slave-grown sugar from Cuba, and charges of breaches of faith from Canadian millowners, and wails from bountyless Newfoundland fishermen, and the usual prophecies of disaster to British shipping, it meant, too, a revivifying of the whole conception of Empire. For it implied the treatment of the Colonies not as minors to be patronized and directed at a sacrifice, but as adults to be admitted to partnership. Nothing is more galling or more demoralizing to a young man than economic dependence, however generously administered. Economic independence even if it leads to blunders and misfortunes is bound to be a tonic to adventurous youth. This is what Grey, following the lead of Peel and Gladstone and carrying Russell with him, offered in his tactless but straightforward way to the colonies. It was characteristic of him that when they used it to set up tariffs of their own, he bewailed their folly and their blindness to the lessons of experience. He would have imposed Free Trade as the Imperial system just as rigorously as his predecessors had imposed Protection. But he was fated, like Wakefield, to discover that the colonies could not be given self-determination without the possibility that they would interpret their own destiny in a different way from that championed by their well-wishers. If the colonies were right to refuse to be forced to be free, Grey was right too, according to his lights, in his attempt to prevent them from using their freedom to re-rivet their chains. One must not expect too much toleration for the wilfulness of youth even from the wisest and most liberal of parents, and Grey was a childless man.

6. LORD ELGIN AND SIR GEORGE GREY

None of these three types of empire-builder—not Grey, nor Wakefield, nor Stephen—possessed what a fourth had by nature, and was able to fortify by long experience, a spontaneous understanding of the colonial point of view. Elgin's achievement has been so recently and in such masterly style set out in Professor Morison's *Life of him* that there is little need to emphasize it here. Still, something must be said of one who was the colonial governor *par excellence*, the man whose task it was to cope with colonial democracy at close quarters—to live in the literal, as well as the metaphorical, sense of the word within a stone's throw of it at its most aggressive, and to lubricate and humanize the internal relationships of the Empire just at the point where there was most occasion for friction. It is only fair to Stephen, Wakefield, and Grey to stress the tenacity and wholeheartedness with which they stuck to their several articles of faith

and forced attention to them on unwilling ears. There are some situations in which the stubbornness of the doctrinaire is of more use than the subtlety of the diplomatist, when to yield an inch is to concede the whole position, when to be deaf and blind to the grievances of the man on the spot is less dangerous than to see his side of the case. None the less the golden age of 'le simplisme' needed, more than most, a man of Elgin's type, and it was fortunate indeed that providence and the anomalies of the British Constitution provided him when they did.

Medieval casuists asked, '*Num archidiaconus potest salvari?*' and 'num' expects the answer No. Early nineteenth-century governors were *ex officio* in a situation of equal jeopardy, and for the same reason—they were expected to please two worlds, the one close at hand and clamorous, the other remote but exacting. Not all of them by any means were old friends of the Duke, with that stiffness of mind and of limb which was so much to the credit of the Peninsular veteran, and the rather easily shocked susceptibilities of the fine old English gentleman. Few of them were really foolish people like Bond Head and Eardley Wilmot, people who recall the mythical case of Lord Lundy of whom 'very soon his friends began to doubt if he were quite the man' for anything but a job in the colonies. But all without exception came up against the difficulty inherent in their position. Sydenham and Metcalfe in Canada, Gipps in Australia, Barkly and Harris in the West Indies, D'Urban and Harry Smith in South Africa, were all able men, but none of them succeeded completely in winning the confidence both of the home authorities and of colonial opinion. Barkly perhaps came nearest to it till he got to South Africa, and it is curious to note that as the period wore on, it was in the West Indies, where both sides recognized that the position was desperate, that the governors found it easiest to survive the pressure of both the upper and the nether millstone. The really 'impossible' questions were those like the Clergy Reserves in Canada, the Land Policy of Australia, and the delimitation of Imperial Responsibilities in South Africa, where an active public opinion on the spot held one solution to be self-evident, and quite honest people at home strongly disagreed. Here the slightest indication of sympathy with one side in the controversy on the part of the Governor would land him at once in serious trouble with the upholders of the other. Two men stand out among their less fortunate brethren as successful governors of the new countries under the Crown, Sir George Grey and Lord Elgin, and of these the first, after many triumphs and much solid achievement, met something like failure in the end.

Grey was in many respects an odd contrast to Elgin. He was emphatically a self-made man. He started life as a penniless sub-altern, the only son of a widow, born at Lisbon after his father's death at the siege of Badajos. After some years' service in Ireland, which turned him into a radical and a land-reformer, he made a name as an explorer of Western Australia, where he showed qualities of enterprise and endurance which helped to secure him the Governorship of the bankrupt colony of South Australia. His efforts to clear up the muddle there having been both drastic and fortunate, he earned promotion to another of the Cinderellas of the Colonial Office, and got his first great chance in New Zealand. A lonely and friendless man, who married unhappily and instinctively held himself aloof from his own kind, he found scope for rare qualities of insight and vision among the Maoris, whom he first conquered by an ingenious and novel method of warfare which he elaborated himself, and then won over by a really sympathetic and devoted study of their traditions and character. The same intuitive understanding of native character helped him to succeed where so many had failed in South Africa. It was there, too, that he showed, in his grasp and exposition of the idea of federation, the sureness of his political instinct and the vigour of his faith in the Empire. Unhappily, it also appeared in the same connection, how dependent he was on the understanding and loyalty which he had always received from his namesake, the colonial secretary. Already in New Zealand his desire to keep native policy in his own hands had embroiled him with the settlers, who claimed, not without some justification, that he deliberately spun out time to delay the grant of representative institutions to the colony until after his departure, though ostensibly advocating them. Now by the glaring irregularity of the method he adopted to advocate S. African federation he frightened the Colonial Office into his recall. This was in effect the turning-point of his career, for though he was soon reinstated and had still much activity and many adventures before him, his influence was never what it had been. Yet, to within a few years of his death, he stood out in the life of New Zealand, where nearly all his remaining years were spent, as a man of imagination and mental power such as is rarely found in the history of new countries. He was a queer blend of autocrat in action and extreme democrat in ideas. Astute, observant, ingenious, and decisive, versatile enough to be a man of mark as an explorer, a soldier, a student of anthropology, an administrator, and a politician, he lacked the supreme quality of leadership, which comes perhaps from a complete absence of egoism. He could not lead men of his own sort.

For all that, his career as a Governor illustrates what could be done by a man with a streak of genius in him coming in with full powers from outside to steer a young community through its early troubles, and more particularly does his association with his namesake the third Earl reflect credit on both.

Yet his warmest admirer could hardly claim that he is of the stature of Elgin. Scotsmen, it has been said, succeed so well in business because they obtain from some unknown source a blend of courage and caution, of imagination and common sense which is exactly what is needed to make a big scheme pay a sound dividend. Again, it has been proved quite often that blue blood and an education at Eton and Oxford do not necessarily inhibit a man from making friends wherever he goes. Not to be self-made may make a man a snob, but it may also give him a humility, an absence of self-consciousness, and a well-bred curiosity about other people, which will disarm even the most class-conscious and defiant of his social inferiors. And Elgin was not a Bruce for nothing. At Christ Church he was recognized by Gladstone as, of all the band of future statesmen who were contemporaries there, the finest natural orator: he had all Dalhousie's power of work and public spirit with the comfortable figure and the requisite number of inches to save him from his fellow Governor-General's self-assertiveness and irritability. Like both Bismarck and Cavour, he was fortunate enough to find out in early manhood how difficult it can be to make both ends meet on a family estate which has not been well managed. The great misfortune of his life, the tragic death of his first wife, leaving him a lonely exile in Jamaica, only deepened the tenderness of a singularly affectionate character, which had expanded under the love of his mother and sister and in the large family circle of which he was the natural leader, and was now tempered, as great natures can be, by the discipline of suffering. There thus came to be behind the genial manners of this plump, unobtrusive person an essential strength and dignity which fitted him for a great part in the world's affairs.

That part was to meet colonial democratic nationalism a good deal more than half-way, and yet to maintain intact the position of the Crown's representative, to succeed just where Sir George Grey failed. As Cornewall Lewis wrote, a self-governing dependency is a contradiction in terms, and so is colonial nationalism. There was and is a great deal to be said for the point of view that the conception of an empire involves the shouldering of imperial responsibilities. This was the view which refused to allow colonies having representative institutions to settle for themselves their own social and economic

structure by the maintenance of slavery. It was the point of view, strongly held by Lord Grey, which maintained that the undeveloped territory of a new country was a trust vested in the mother country to be administered in the interests not of the existing inhabitants but of future emigrants, and which even expected gratitude from the recipients for the supply of convict labour. It was the point of view which declined to give the protection of the flag to settlers who chose to wander into the interior of South Africa, yet felt uneasy about leaving them free to do as they liked beyond the recognized frontier. This point of view found a good deal of colonial backing when the economic advantages or the military protection, which the mother country had it in her power to give, were likely to be of value to the recipients, and would always find local support among minorities, like the Anglicans in Canada, or the missionaries in South Africa, whose interests coincided with the ideals of the governing classes at home. Such minorities naturally made the most of the claim that loyalty to the Empire implied the support of the home authorities in the policy which those authorities, in their wisdom, thought best for the colonies. But over against this 'imperial' sentiment stood a much more vigorous and wholesome growth with its roots striking down far deeper in the soil of the new countries. This was the sentiment of local patriotism based on the idea that the responsibility for determining the destiny of a new country lies with its inhabitants. There will always be difficulties about the application of this doctrine. How large does a territory have to be to be self-determining? Is the right to settle its own destiny lodged in Western Australia or Tasmania or Quebec or Natal as units, or can Australia, Canada, or South Africa as a whole overrule any one of its constituent parts? If so, why should not the same claim be put forward on behalf of the Empire as a whole to overrule the larger colonies in its turn? And if within these colonies there be solid blocks of non-British races, have they the right to preserve and foster a racial self-consciousness within the new nation of which they form a part? But such questions, pressing as they have often been, have not obscured in the minds of colonial nationalists the broad distinction between dictation from home and self-determination.

Colonial nationalism, however, never necessarily implied disloyalty any more than the 'imperialism' of 'loyal' minorities necessarily implied a real understanding of the inter-imperial relation as it was to develop. Men like Lafontaine, Baldwin, Howe, and Wentworth were shrewd enough to know that the imperial connection was worth keeping, worth making sacrifices for, and capable of conferring real

benefits: what they quarrelled with the home authorities about was not whether the Empire should continue to exist, but on what terms their people were to remain members of it. It was only in South Africa that any considerable section of the population definitely adopted the idea of independence, and half the troubles in South Africa came from the fact that even among the Boers north of the Orange River the desire for complete independence was not constant nor wholehearted. That criticism was taken at home to mean disloyalty and a desire for independence was one of the most galling grievances of the colonial malcontents, and the people who despaired of the Empire were most of them untravelled inhabitants of the mother country. When Sir George Grey in the last phase of his career became the advocate of New Zealand's independence, he found himself without a party in the country.

It needed, however, a good deal of sympathy and insight to detect under the shrill cries of colonial democrats the undertone of respect and affection which they maintained for the mother country. In most family quarrels things are said on both sides which are hardly meant, even in the heat of the dispute, to be taken seriously, and when men like Gipps and Wentworth were in the ring there was bound to be some blood-letting. Metcalfe's career in Canada shows, too, how little a dignified Englishman, who justly prided himself on his powers of conciliation, appreciated what he could only regard as being hit below the belt in the rough and tumble of Canadian politics. It was the peculiar gift of Lord Elgin that the more strongly he felt the less likely he was to lose either his head or his temper; whatever happened and wherever he was, he could be relied on to remain both firm and cool. He served his apprenticeship in Jamaica. Here his clear eye noted that the much-advertised sufferings of the negro had left him one of the most childishly happy of God's creatures, his business-like energy helped to inspire the planters to whine less and use machinery more, and his polite firmness read Lord Stanley a lesson in good manners. He crowned his career (though his premature death perhaps frustrated the finest achievement of all, as Canning's successor in India) by his two embassies to China, where the destroyer of the Summer Palace at Peking, and the mandatory of Palmerston, showed himself patient and firm enough to conduct diplomacy with mandarins, and singularly pitiful of a humiliated and helpless people. But it was in Canada that he made his greatest contribution. He was not the first English gentleman to see under the raw sensitiveness and rough ways of Canadian politicians the qualities of two great races. Colborne and Bagot had appreciated

the French Canadians, and Bagot especially had dared to trust their respect for institutions, their manly determination to preserve their individuality, and their essential conservatism. Durham, Sydenham, and Metcalfe had not been alone in feeling that the future of Canada might well be safe in the hands of Englishmen and Scotsmen from across the Border and the Atlantic. But Elgin did what before him only Bagot, as a dying man, had attempted. He put out one hand to Baldwin and the other to Lafontaine, and so dealt racialism in Canadian politics a far deadlier blow than Durham's policy of French absorption could ever have given it. When the 'patriots' of Montreal pelted his coach, and sneered at his cowardice because he would not give them the chance of again insulting the Queen in the person of her representative, he settled down to wait quietly for the time when he could welcome with the same friendliness, and back with the same staunchness, a ministry headed by the repentant Tory McNab, as he had shown to Baldwin and Lafontaine when they proposed to 'compensate rebels'. So he made for the sovereign's representative a new position as different from the old as George III's position nearly a century before had been different from what Queen Victoria's became thirty years later. He offered the crude democracy of Canada the help of a dignified, impartial, and experienced chairman instead of the hectoring of an embarrassed autocrat, or the leadership of a partisan chief. The respect and authority which he so won and so maintained make him the type of the inter-imperial relation at its best—the partnership, based on mutual respect and understanding, of new countries with old. He was fortunate no doubt in the pioneer work of Durham and Bagot, in the loyal backing of Lord Grey, in the opportunity, tirelessly improved, of better relations with the United States, in the fine qualities which he helped to elicit, but which were already ingrained, in Baldwin and the French political leaders. But his greatest asset was his own instinctive feeling for the 'under-dog', which helped him in Jamaica, in China, and in India never to lose sight of the good there is in every man. What gave him his power in Canada was this imperial gift of imaginative sympathy. It is a gift which is all too rare among Englishmen, for all their infinite opportunities for its use. Perhaps its absence helps to maintain high standards of conduct, to preserve racial purity and the power of leadership: it does not always pay to absorb too much local colour or to be too much all things to all men. But Elgin stood high above the risk of contamination as he did above the temptation of arrogance: to do in Rome as the Romans did was never a pretext with him for forgetting the rules of fair dealing and scrupulous

honour. He was loved and understood in Canada because he loved the country and understood the virtues and temptations of the men of two races who were making a nation.

There may be a squalid and a petty side to colonial history, which even the best it can produce as officials, publicists, politicians, and administrators can hardly redeem. Like the scenery of a new country, it lacks the familiar picturesqueness, the mature beauty, the delicate finish of the European countryside: tins and barbed-wire fences, scraggy telegraph poles, half-made roads and half-ballasted railway tracks, corrugated-iron roofs and wooden shacks, and small talk revolving everlastingly round the two poles of local gossip and economic statistics—such things may seem to the fastidious European to make an impossible background for the dignity, the refinement, and the glory of human achievement at its best. But Elgin saw, for it was there to be seen, what lies behind the provincialism and the shoddiness of a new country, how it is redeemed and beautified by the conquering energy of a host of nameless men and women, driven out into exile by the fiery sword of economic pressure, to eat their bread in strange places in the sweat of their faces, and to bear their children in sorrow that through them the men of the future may subdue nature and inherit the earth. The real hero of colonial history is the man whose slow smile the Governor-General must often have called out, the lonely and silent pioneer.

SELF-GOVERNMENT

THE first British Empire had been unique among the Empires of its day in the extent to which the colonies were left to manage their own affairs, but the experiment had ended in failure. The American Revolution was not unnaturally followed by a reaction against the idea of self-government. True, the most important of the colonies remaining—the Maritime Provinces of the north, and after 1791 Canada, and the West India Islands—enjoyed representative government; and the promise of Parliament, made in 1778, never to tax the colonies for revenue, remained upon the statute-book. But Parliamentary grants, which were of course beyond the control of the Assemblies, were made towards the expenses of many, if not most, of the colonies; in the Canadas a substantial part of the revenues was under the control of the Crown; and there, where the statesmen had the freest hand, the existence of an organized Executive Council and an Upper Chamber of life nominees further diminished the power of the Assemblies as compared with those of the old American Colonies. Nor were any of the colonies conquered during the Revolutionary and Napoleonic Wars given free institutions. Above all, faith in the Empire and in freedom as its governing principle were at a low ebb.

Huskisson, and in the Colonial Office itself Stephen, whose influence steadily increased, held more liberal views, but it was not until the advent of the Whigs to power in 1830 that they began to be acted on. In 1831 the Crown revenues in Upper and Lower Canada, other than the 'casual and territorial' revenues, were handed over to the Assemblies [1], and that without the prior grant of a civil list, which had hitherto been regarded as indispensable. In the same year the Imperial Government announced its readiness to abandon the attempt which had been made in 1791 to impose a Church establishment on Canada by Imperial authority, and left the 'clergy reserves' to the disposition of the Upper Canada Assembly [2]. In Upper Canada the concession of the revenues produced the result hoped for, in the shape of a civil list: in the Lower Province the civil list arrangement proposed by the Assembly was rejected, on the ground that it did not provide satisfactorily for the independence of the judges [3]. The Assembly had thus got something for nothing: it did not, however, moderate its demands, but enlarged them, and in its famous Ninety-Two Resolutions¹ called for radical changes in the Act of 1791, and particularly for a reform of the Legislative Council (the ulterior object no doubt being to make it, like the Assembly, predominantly French). Meanwhile other colonies had been petitioning for representative institutions: Newfoundland gained its wish in 1832, and in New South Wales the Governor was in favour of introducing a representative element into the constitution despite the presence of large numbers of liberated convicts [4]. In 1834 Morin, one of the Lower Canadian leaders, was examined by a Committee of the House of Commons on the Canadian demands [5], and at one time a settlement seemed in sight. In the end, however, the sole result was the appointment of a Commission of Inquiry with conciliatory but vague instructions.² The

¹ These are printed in Kennedy, *Documents of the Canadian Constitution* (1759–1915), pp. 366–88.

² Printed in Kennedy, *op. cit.*, pp. 399–411.

Commission was unanimous in recommending that the concession of 1831 to Lower Canada be revoked [6]; but, despite its perplexity, the Whig Government refused to retrace its steps, and its more liberal members, such as Lord John Russell, realized that the only chance of retaining Canada lay in further concessions [7]. But what form were these concessions to take? One of the Upper Canadian leaders, Robert Baldwin, came to England in 1836 and earnestly advocated that the Provincial Executive Council be made responsible to the Legislature like an English Ministry [8], but Baldwin was merely the leader of a party whom the Lieutenant-Governor, Sir Francis Head, had just succeeded in discrediting by an adroit appeal to the sentiment of loyalty, and his words fell upon deaf ears. More than one Colonial Governor regarded reform and disloyalty as synonymous: Sir A. Campbell endeavoured, though unavailingly, to cast this stigma upon a New Brunswick deputation which came to England in the same year to request the surrender of the provincial revenues in return for a civil list [9]. The success of the New Brunswick mission stimulated the Nova Scotian Reformers to ask for similar concessions and for a reform of the Legislative Council [10]. But before the Nova Scotians could have their answer the crisis in Lower Canada came to a head. The continued stoppage of supplies forced the Imperial Government to take coercive action,¹ anxious though it undoubtedly was to postpone this measure till the last possible moment and to do its utmost still to conciliate the Assembly. The threat of coercion produced the counter-threat of rebellion [11], and an attempt to arrest the leaders of the incipient rebellion precipitated it.

At last the Imperial Government was forced to lay all its cards on the table; and, to its lasting credit, it showed itself appreciative of the fact that the right course was to apply more fully the principle of self-government. As High Commissioner it chose the brilliant and headstrong Radical, Lord Durham. Self-government was in the air: in this year of apparent failure the leading Conservative of New South Wales gave his considered opinion that it was bound to come soon in that colony [12]. In Canada Durham found the position more complicated than he had expected: great as was his faith in self-government, he did not believe that it would work in a colony so torn by racial feeling as Lower Canada. But he still recommended the adoption of Robert Baldwin's principle of responsible government, while also recommending that the Lower Province should be united with the Upper, where the French element was absent. The Melbourne Government was convinced by the report of its High Commissioner that union was a necessity, but not that responsible government was even a possibility,² and all the persuasive arguments of Joseph Howe in North America and of Charles Buller in England did not induce it to change its mind.³ Charles Poulett Thomson was sent to Canada to convince the Canadians of the desirability for material as well as other reasons of a union of the Provinces, and to govern them in accordance with their wishes with-

¹ Resolutions introduced into the House of Commons on March 6, 1837: Kennedy, *op. cit.*, pp. 434-6.

² See Lord John Russell's despatch of Oct. 14, 1839, in Kennedy, *op. cit.*, pp. 522 et seq.

³ Howe's Letters are printed by Kennedy, *op. cit.*, pp. 480 et seq., Buller's pamphlet by E. M. Wrong in his *Charles Buller and Responsible Government*.

out surrendering his responsibility to the Government at home. Before he died in September 1841 he had met with extraordinary success: the Act of Union was passed by Parliament in 1840 with the consent of those authorized to speak for Canada:¹ the contentious question of the clergy reserves in the Upper Province was set at rest for the time by another Act [13]; and the 'responsible government' cry was silenced, or at least lulled to sleep, by the 'wand' of the Governor-General [14]. When the Peel Ministry came into office, Sir Charles Bagot, the new Governor-General, was instructed to pursue the same conciliatory policy [15]. In some respects, indeed, Bagot's instructions were based on less liberal principles, though he was to make a real attempt to win over the French, which Poulett Thomson had conspicuously failed to do. Lord Stanley indeed had no very profound belief in the principle of colonial self-government. The New South Wales Act of 1842 conceded the principle, but hedged it about with a multitude of restrictions, though of course all parties admitted that the convict strain in the population made caution necessary at first [17]. At the Cape a petition for an Assembly had the support of the Governor, but Stanley replied by a dispatch which said little about the merits of the principle and a great deal about the insuperable obstacles to its adoption [16]. His policy received its first check in Canada, where Bagot, finding it impossible to appease the French without yielding their demands, wisely yielded and admitted their leaders to his Government on their own terms [18]. Only with great reluctance did the Imperial Government acquiesce in Bagot's policy: when Bagot died in 1843 it actively supported Sir Charles Metcalfe's attempt to win back some of the lost ground.² Metcalfe's stand ere long resulted in the resignation of his Council, and almost simultaneously the efforts of Lord Falkland to govern Nova Scotia on Sydenham's principles broke down [19, 20], and the resignation of Joseph Howe left him to rule, as Metcalfe was also ruling, through the 'loyal' party. Once again loyalty was confusing the issue, though this cry enabled Metcalfe to get a small majority in an appeal to the country, and thereby stave off disaster. In New South Wales, too, the new constitution was not working satisfactorily: the Legislative Council was able to escape from one of the intended restrictions upon its power—an elaborately designed scheme of local government—and was growing restive under the others [21]. And soon Metcalfe found that the loyalty even of the loyalists was tainted [22]: yet Stephen confessed that the Colonial Office could do nothing in Canada but trust to the Governor-General, dependence on the Mother Country in all internal questions having become nothing but a form [23]. The time had come for a further advance.

The advance was made in the years 1846-8 by the Ministry of Lord John Russell, the man primarily responsible being the Colonial Secretary, Lord Grey. One of the first Acts passed by the Ministry gave a representative constitution to New Zealand [25]: in the House of Commons in 1845 Peel had given his assent to the principle, but Stanley had cut down to the very minimum the practical application to be given to it for the

¹ On the achievement of union see Kennedy, *op. cit.*, pp. 528-9; for the Union Act, *ib.*, pp. 536 et seq.

² For Metcalfe's view of responsible government see Metcalfe to Stanley (Aug. 5, 1843) Kennedy, *op. cit.*, pp. 565 et seq. The best exposition of Stanley's attitude is in a speech of May 30, 1844: Hansard, vol. lxxv, pp. 38-61.

present [24], and Gladstone in his brief tenure of office had not had time to act upon his more liberal promptings. Lord Grey also invited the Government of the Cape to report whether the representative principle might not be introduced there [26]. It was, however, in a despatch to the Lieutenant-Governor of Nova Scotia that he made the most important concession of all, by unreservedly accepting, and indeed advocating, the system of party government.¹ In the course of 1847 he sent to the Governor of New South Wales a comprehensive proposal for the remodelling of the constitutions of the Australian Colonies generally—the particular occasion being the demand of Port Phillip for separation [27].

With these concessions of principle the battle of colonial self-government had in reality been won, but all was not yet plain sailing. In New Zealand Governor Grey maintained that the natives were not prepared to see a self-governing constitution in which they could not share conferred upon the colonists [28], and secured its suspension for five years. In New South Wales public opinion was strongly antagonistic to Lord Grey's proposals, and demanded that no change should be made in the colonial constitution without colonial consent [29], though Lord Grey hastened to assure the colonists that this he had always intended to obtain [30]. In Canada and Nova Scotia, however, with his entire approval, the transition to full responsible government was effected with the defeat of the Conservatives in both colonies at the elections of 1847 and the acceptance by Lord Elgin and Sir John Harvey of the victorious Liberals [31]. Then at the Cape Lord Grey himself showed signs of wishing to draw back, or at least, after the officials and judges consulted by Sir Harry Smith had reported unanimously in favour of representative government [32], he inclined to think that the powers of the Assembly should at first be limited—mainly no doubt on account of the difficulty of the native problem, though the limitation he proposed was in the matter of finance. He abandoned the idea, however, when assured by Stephen, no longer Under-Secretary but still a trusted adviser, that it would never work [34], and accordingly in his reply to Sir Harry Smith unreservedly accepted the representative principle. The Cape was thereby differentiated from the tropical colonies such as British Guiana, where Lord Grey defended the existing mixed constitution on the ground that the balance between the planter and the negro labourer was best held by the Crown [33]. In 1849 Canadian self-government had to face two severe tests—the Rebellion Losses Bill, which enabled Conservatives in Canada and England once more to drag the red herring of disloyalty across the trail,² and the movement, due partly to pique and partly to economic distress, for annexation to the United States—but it emerged successfully. Meanwhile the colonists of New Zealand were complaining that the plea of danger on which Sir George Grey had secured the postponement of their free constitution was unjustified [35]; but the principal centre of interest was the Australian Constitution, which had by this time advanced from the preliminary outline sketched out by Lord Grey through the report of a committee of the Privy Council to the form of a Bill. In this form it made yet another voyage to Australia and its reception was not unfavour-

¹ Grey to Harvey (Nov. 3, 1846): Kennedy, *op. cit.*, pp. 570-7.

² On the Rebellion Losses Bill see Elgin to Grey (April 30, 1849): Kennedy, *op. cit.*, pp. 579-83; also the speeches of Gladstone and Lord John Russell in the House of Commons: Hansard, vol. cvi, pp. 191-242.

able, at any rate outside New South Wales [36]. At the session of 1850, after some interesting debates, it passed with some amendments into law [37]. In his speech introducing it Lord John Russell frankly recognized that true colonies ought to be self-governing, though he accompanied this declaration with a confession not of faith but of doubt as to the ultimate effects of self-government upon the unity of the Empire.¹ According to Lord Elgin this 'sting in the tail' greatly marred the good effect of this speech in the colonies;² and certainly the colonial Imperialism which has since had such a striking influence upon the development of the Empire was by now beginning to manifest itself [39]. On the other hand, there was one important aspect of Imperial relations which the colonies were apt to neglect: it is illustrated by Lord Grey's dispatch on the internal defence of New South Wales [38]. The colonies did not even altogether appreciate the principle of responsible government which they had had conceded to them: Sir Edmund Head, the Lieutenant-Governor of New Brunswick, showed plainly that in a small colonial community it was far from easy to make the system work [40]. But it was futile to attempt to convince such a community that any other system was better suited to its needs, and in 1851 the concession was made to a still smaller colony, Prince Edward Island [41].

By this time the Australian Colonies had received their new Constitutional Act. To Victoria, South Australia, and Van Diemen's Land it was, whatever its faults, a new charter of freedom, and little complaint was heard: in New South Wales, however, although the powers of the Legislative Council had been considerably extended, it vehemently complained that more had not been given, and in particular that the control of lands and immigration was still retained in Imperial hands, and that all colonial laws were still to be sent home for the approval of the Colonial Office [42]. On both these points Lord Grey put up a stout defence [43], but, though land policy and transportation were undoubtedly the real grievances, an unyielding attitude might have had grave political consequences. However, as we shall see in later sections, Sir John Pakington shortly afterwards conceded the colonial demands. In 1852 New Zealand at last received the constitution which Lord Grey had planned to give it six years earlier: Sir George Grey recommended considerable changes in the earlier Act but the retention of the provincial system which had been one of its chief features [44], and his suggestions were followed in the main [45]. Pakington was congratulated on all hands on the unprecedented liberality of his measure, but the clergy reserves question in Canada, which had once again come to the front, threw grave doubt upon his understanding of the real meaning of colonial self-government. He seemed to be ready, on behalf of a minority belonging to the Established Churches, to risk a serious collision with the Canadian Assembly [46, 47]. Fortunately a change of ministry occurred and the Duke of Newcastle handed over the control of the reserves.

The Duke of Newcastle also finally inaugurated the new constitution at the Cape, which since 1848 had been the occasion of a protracted game of battledore and shuttlecock between Cape Town and Downing Street, and definitely conceded the principle of responsible government to the

¹ Hansard, vol. cviii, pp. 536-67.

² Elgin to Grey (March 23, 1850): Kennedy, *op. cit.*, pp. 583-6.

Australian Colonies, where the advance in wealth and population caused by the discovery of gold in 1851 had made the concession inevitable [48]. Those colonies, indeed, were now busily engaged in framing more elaborate constitutions under the powers granted to them by the Act of 1850. By far the most interesting discussions occurred in New South Wales, where Wentworth made a last unavailing attempt to save the colony from democracy and to limit by law the veto power of the Crown [49, 50]. In 1855 the constitutions of the Australian Colonies, with the exception of these proposed restrictions on the royal prerogative, were finally approved by the Imperial Government [51], and in 1856 responsible government, willingly conceded by the Secretary of State at the request of the new Assembly [52], was introduced into New Zealand. Responsible government, though not yet everywhere applied, thus became the accepted principle in all the settlement colonies.

The more far-seeing colonial statesmen, however, realized as Durham had done that self-government was not an end in itself, and that the destiny of the colonies was nationhood. In the years 1857-8 this fact is strikingly demonstrated. The project of an Australian federation, dear to the heart of Lord Grey, had been abandoned by him, under pressure, in 1850: it was now revived by Wentworth [53]. It still appealed, however, only to the few, and the Colonial Office was no longer in the mood for experiments [54]. A. T. Galt was no more successful when he came to England with two of his Canadian colleagues in 1858, and asked Imperial support for his scheme of federation in North America [55]. The Colonial Office would not move an inch in advance of colonial opinion, which showed no signs of enthusiasm. In South Africa the idea emanated not from a colonial leader but from the luminous mind of the Governor, Sir George Grey [56]. Federation was his remedy for the fissiparous tendencies which had begun with the Great Trek, and had been encouraged in recent years by the Imperial Government. This policy the Imperial Government was not prepared to change, believing as it did that success was almost impossible, and indeed quite impossible without an extension of Imperial responsibilities which it was not prepared to face [57]. Thus the period ends upon a note of uncertainty. Premature though these proposals may have been, it was perhaps a pity that Imperial encouragement should be so entirely lacking. But this *non possumus* attitude is full of significance: thirty years earlier Downing Street had been subject to reproach for its jealous restriction of colonial rights and its minute supervision over colonial affairs: now it was so shy of Imperial responsibilities that even in so far-reaching a question as colonial union it waited for popular feeling in the colonies to give the lead.

MESSAGE OF COLBORNE TO UPPER CANADA HOUSE OF ASSEMBLY¹

(*P. P.*, 1831, xix.)

Upper Canada, York, 21st March 1831.

The Lieutenant-governor has the satisfaction to inform the House of Assembly that the King places at the disposal of the Provincial Legislature all His Majesty's interest in the duties which are collected under the British Statute, 14 Geo. III. c. 88,² and which have hitherto been applied to the support of the Civil Government by warrants of the Lords Commissioners of the Treasury.

His Majesty, in conceding the complete disposal of this increasing revenue, has naturally the confident expectation that so great a proof of His anxious desire to consult the wishes of His faithful and loyal subjects in Upper Canada will be met with a reciprocal feeling by their representatives.

The Lieutenant-governor is therefore instructed to acquaint the House that His Majesty's Government trusts that the Legislature will think it indispensable that provision should be immediately made for the salaries of the Lieutenant-governor, the Judges and principal officers of the government; and for such expenses of the Civil Government and administration of justice as may appear, upon examination of the Estimates in possession of the House, to require a more permanent arrangement than the supplies which are granted by annual vote.

The sum of £8,000 is deemed sufficient by His Majesty's Government for this important object, exclusive of the sum granted permanently by a Provincial Act towards the maintenance of the Civil Government.

The revenue to be ceded cannot be calculated at less than £11,500 sterling; and it will be highly gratifying to the Lieutenant-governor to concur in any measure that may accelerate the final arrangements proposed by His Majesty's Government to give effect to His Majesty's

¹ Sir John Colborne, afterwards Lord Seaton, was Lieutenant-Governor of Upper Canada from 1828 until the beginning of 1836. He was certainly one of the most distinguished of those old soldiers of the Napoleonic Wars who afterwards became Governors of Colonies. When succeeded by Sir Francis Head he remained in Canada as Commander-in-Chief, and it therefore fell to him to suppress the subsequent rebellion; and for a short time he acted as Governor-General. His military talents were considerable, and he was a man of strong will and unblemished integrity; but he was a Tory in politics and was out of sympathy with the political aspirations of the colonies and with Whig concessions to them.

² 14 Geo. III, cap. 88, was the 'Quebec Revenue Act', the Quebec Act itself being cap. 83 of that year. It imposed duties on spirits and molasses and appropriated them to the expenses of the administration of justice of the civil government. The casual and territorial revenues which had passed from the French to the British Crown were expressly continued.

gracious intentions, and to the decision of the British Parliament,¹ when the Lords of the Treasury may be released from the obligation of appropriating in future the duties referred to in this communication.

Government House,

28th Feb. 1831

(signed)

J. COLBORNE.

2

DESPATCH FROM GODERICH TO COLBORNE (EXTRACT)² (P. P., 1839, xxxiv.)

Downing Street, 21st November 1831.

With respect to the Clergy Reserves, I have no Hesitation whatever in stating that I entirely concur with the Assembly in thinking that they form a great Obstacle to the Improvement and Settlement of the Province, without being productive of any corresponding Advantage to make up for the Inconvenience.³ During the Forty Years the System of making these Reserves has existed the total Amount of the Income they have afforded has not equalled the Expense incurred in their Management.

I find by the Abstract of the Income and Expenditure of the Corporation for managing the Reserves that the Receipts during the last Nine Years have not averaged more than 200*l.* a Year, and that the whole of these Sums have been absorbed by the Expenses of the Officers of the Corporation. It is indeed stated that a considerable Number of Leases have been granted, and that a yearly Income may be expected from the Land so let of 3,350*l.* Currency; it appears, however, that this Sum is what is calculated upon as the Amount of the Rent which ought to be obtained, not what has been actually received; and I fear that when the Expenses of Management and Collection come to be deducted, and the necessary Allowance made

¹ The Act of the Imperial Parliament legalizing this concession (1 & 2 Will. IV, cap. 23) had not yet been passed, but Lord Howick had introduced it into the House of Commons on February 18.

² Viscount Goderich was Secretary of State for the Colonies from November 1830 to April 1833. Though he was for some time Chancellor of the Exchequer in Lord Liverpool's Ministry—earning from Cobbett the derisive nickname of 'Prosperity Robinson'—and after the death of Canning was for a few months Prime Minister, he was a man of only moderate abilities and irresolute in the extreme. 'He was', says the *Dictionary of National Biography*, 'probably the weakest who ever held office in this country.' The real power while he was at the Colonial Office rested with the permanent officials and with his Under-Secretary, Lord Howick. In this case, for instance, there are in Lord Howick's papers two memoranda, one dated August 19, 1831, the other undated, strongly urging that the clergy reserves provisions of the Constitutional Act of 1791 should be repealed and the Upper Canada Assembly left to do what it might think proper in the matter. Clearly Goderich, whose conservatism in Church matters was shown by his resignation with Stanley in 1834, was overborne by Howick's insistence.

³ See the discussion of the clergy reserves in the *Durham Report*, especially pp. 173-9 (vol. ii in Sir C. P. Lucas's edition).

for bad Debts, the net Proceeds would be very considerably reduced; even supposing the nominal Rent to be collected it would be but a small Sum when compared with the Burden inflicted upon the Colony. It seems indeed to be proved by what has been experienced, not only in Canada but in the Australian Colonies, that Land in Countries where so much remains unappropriated can only be profitably occupied by those who have the Stimulus of personal and permanent Interest. Hence the Income derived from landed Property retained in the Hands of the Government for any public Purpose is trifling compared to the Inconvenience it occasions; the same Sum raised in almost any other Manner would be much less burdensome to the Colony.

Under these Circumstances I cannot entertain a Doubt that an End should immediately be put to the System of reserving a Seventh of the waste Lands in Canada for the Support of a Protestant Clergy; that which would be an objectionable Mode of raising a Revenue for any public Purpose is still more strongly to be condemned as a Provision for the Ministers of Religion, since it must have a direct Tendency to render odious to the Inhabitants those to whom their Good-will and Affection are so peculiarly needful.

Such are the Considerations by which His Majesty's Government have been influenced in coming to the Conclusion that the Retention of the Clergy Reserves in their present State is inexpedient. It is scarcely necessary to protest against this Conclusion being construed into an Acquiescence in the Opinion expressed in a Petition upon this Subject, signed by a considerable Number of the Inhabitants of the Province, 'that any Kind of Church Establishment, circumstanced as Upper Canada is, is essentially anti-christian and baneful to every Interest of Humanity.' I am convinced that this is a Sentiment which the great Majority of those by whom the Petition was signed would not seriously mean to adopt, and that in their Eagerness to get rid of a practical Grievance, they have incautiously sanctioned speculative Opinions, which I have no Doubt that upon mature Reflection they would disavow. Believing this to be the Case, I decline to enter into any Argument for the Purpose of refuting an Assertion, the Justice of which I so entirely deny. It is sufficient to repeat that His Majesty's Government have advised the Abandonment of the Reserves, for the simple Reason that after an Experience of Forty Years they have been found not to answer the Expectations entertained at the Time the System was established, but have entailed a heavy Burden upon the Province without producing any corresponding Advantage. . . .¹

¹ This despatch failed to achieve its object. The House of Assembly continued to demand that the reserves should be sold for educational purposes, whilst the upholders of the Church of England, who were strongly entrenched in the Legislative Council, were opposed to any surrender of its claims. On the temporary settlement of the question in 1840 see below, No. 13.

DESPATCH FROM GODERICH TO AYLMER

(April 10, 1832) (EXTRACTS)¹

(P. P., 1837, vii.)

The Bill which your Lordship has transmitted renders the tenure of the judicial office dependent on the good behaviour of the judge, and if passed into a law, would therefore to that extent accomplish His Majesty's wish. But it does not make a fixed and permanent provision for the maintenance of the judges. It enacts that their salaries and retiring pensions 'shall be taken and paid out of the proceeds of the casual and territorial revenue, and the revenue now appropriated by Acts of the Provincial Parliament for defraying the charges of the administration of justice and the support of the Civil Government, and out of any other public revenue of the province which may be or come into the hands of the Receiver-general.'

Passing over for the moment the question of the right of the House of Assembly to dispose of the funds of which a specific mention is made in this passage, I observe that the enactment itself amounts to nothing more than a declaration that the judges shall be paid out of those collective funds of which the House of Assembly have, or claim to themselves, the right of appropriation. Such a provision will not supersede the necessity of an annual vote of the House to sanction the payment of the judges' salaries, nor authorize the Governor to issue his warrant to the Receiver-general for those sums, in the event of such a vote being withheld. The popular branch of the Legislature would therefore retain the power of diminishing the official incomes of the judges, or of stopping the payment of them altogether; and would thus exercise an influence over the bench, subversive of that sense of independence on all parties in the state, so requisite in the members of a body whose high office it is to ascertain and protect the rights of all with strict impartiality. The British Parliament have studiously divested themselves of all such means of controlling the freedom of the judges. During the last two reigns, and in the reign of His present Majesty, six Acts of Parliament have been passed, augmenting the salaries of the judges of England. I refer to the 49 Geo. 3, c. 147; the 53 Geo. 3, c. 153; the 6 Geo. 4, c. 82, 83 and 86; and the 1 Will. 4, c. 70. By each of these Acts the grants made for the maintenance of the judges, are declared to be 'charged and chargeable upon the Consolidated Fund, next in order of payments' to certain specified charges, '*but with preference to all other payments whatsoever.*' It is only over the surplus

¹ Lord Aylmer, a distinguished soldier but an inexperienced administrator, was Governor of Lower Canada and Governor-General from 1830 to 1835. He brought to his task good intentions, but no particular capacity for government.

of the Consolidated Fund which remains after the judges' salaries have been paid in full, that the House of Commons exercises its privileges of making an annual appropriation; and that surplus is of such moment, that no contingency upon which it is of any practical importance to calculate, could endanger the security of the pledge thus given for the independence of the judges on the popular branch of the Legislature.

If this entire exemption from all dependence on the House of Commons, be a necessary security for the impartial discharge of their duty by the judges of England, a corresponding security is certainly not less necessary in Lower Canada. The population there being divided into two classes differing from each other in national origin, in language, religion and legal customs, and one of those classes enjoying in the House of Assembly a preponderating influence, which is regarded by the other (with whatever reason) with habitual jealousy, it is indispensable that the judges should feel themselves absolved from any risk in uprightly interpreting and resolutely enforcing the law, even in those critical cases in which the two great parties in the province may be opposed to each other. His Majesty cannot be advised to decline the duty, painful as the discharge of it may be, of withholding his assent from a law which a large minority of his subjects in Lower Canada might with reason regard as placing the very sources of justice itself under the virtual control of a single and distinct party, however numerous and however much entitled to respect that party may be. . . .

It is with no ordinary feelings of regret that I announce to your Lordship that His Majesty will not be advised to assent to the present Bill. I had indulged, and not without great apparent reason, the hope that the communications which I have had the honour to convey through your Lordship to the Provincial Legislature would have been received by them as a satisfactory proof of His Majesty's earnest desire to gratify to the utmost possible extent the wishes of His Canadian subjects; and that proposals, made in the unreserved spirit of conciliation, would have been received in the same temper: it is with a proportionate disappointment that I find them met by novel pretensions, urged in a form which I am unable to reconcile, either with Parliamentary usages, or with the respect due to His Majesty by the other branches of the Provincial Legislature. If my former despatches have failed to induce the conviction that His Majesty is anxious to co-operate in every measure calculated to promote the welfare of Lower Canada, and to assert His prerogative only with a view to the benefit of His subjects in that province, I despair of finding any language which would convey that impression. But while the King studiously maintains and freely acknowledges the rights of the two Houses of General Assembly, His Majesty is not less bound by His regard for the general good of His people,

to assert His own; and especially when encroachments are attempted, in form and manner derogatory to the dignity of His exalted station.

Your Lordship will transmit to each of the two Houses of the Provincial Legislature a copy of this despatch, acquainting them that His Majesty is not only prepared, but is most desirous to co-operate with them in the enactment of a law which should render the tenure of the judicial office dependent on the good behaviour of the judges, and their salaries independent of the future votes of the House of Assembly; and that His Majesty does not object to the erection of the Legislative Council into a tribunal for the trial of any offences which the judges may be charged with committing in the execution of their offices; but that His Majesty cannot authorize you to assent to any Act for establishing judicial independence, containing any enactments, or declaratory of any principle of law, foreign to that subject.

I have, &c.

(signed) GODERICH.

4

DESPATCH FROM BOURKE TO STANLEY [EXTRACTS]¹

(*Historical Records of Australia*, Series I, vol. xvii.)

Government House, Sydney,

25th December, 1833.

SIR,

The difficulties I have lately encountered in Council in carrying through the Jury Bill, which I had the honor to represent in a former despatch, and the necessity under which I found myself of opposing measures apparently dictated more by private or party feeling than by a comprehensive view of the public advantage, have led me to request your attention to a few observations on the composition of the Legislative Council as it now stands, and on the importance of the duties it has to perform.

I would first briefly bring to your recollection the fact that there are two parties into which the community of N.S.W. is more or less divided. These parties are usually designated as Emigrants and Emancipists,² although their respective bodies are not confined to that exact description of persons, for in connexion with the latter are

¹ Sir Richard Bourke was an Irishman and, though a soldier, a man of liberal opinions. As Lieutenant-Governor, nominally of the eastern districts but really of the whole colony, of the Cape of Good Hope from 1825 to 1828, he was accused by the colonists of undue partiality towards the natives, but as Governor of New South Wales from 1831 to 1837 he was a great success, and more popular than any of his predecessors.

² The 'emancipists'—convicts who had served their terms—had been in favour with Governor Macquarie (1810–21). His liberal treatment of them had created the opposite party—often known as the 'exclusionists'; but, as Bourke explains, the real nature of the division had changed.

to be found a great number of the free emigrants, and generally those who advocate Liberal principles. I could not perhaps better convey a right impression of these two parties than by mentioning the strong interest that is felt in the colony in all the great events which take place in England; and that the sentiments of the Liberal Party here are with His Majesty's Government in all those measures of public improvement which they are happily accomplishing. The existence of this general division of Parties in the colony has been frequently recognised in Parliament, and would seem to have formed one of the strongest grounds for the departing so widely from the Laws of England in the creation of a Legislative Council composed of fifteen persons wholly appointed by the Crown, and in the institution of a Jury consisting of seven Military officers. By the appointment of the latter, His Majesty's Government contemplated and effected the erection of an impartial though not a popular tribunal for the trial of offenders, and by reserving the nomination of the members of the Council, it was doubtless proposed to obviate the ill-effects which were apprehended from a preponderance of the Emancipist Party, if the choice were left to popular election. It has happened, however, that the selection of the unofficial members of the Council has been made almost entirely from the opposite side, and the official members being for the most part inclined the same way, the evil of Legislating for the whole community by means of a Council composed of one Party exists at this moment in full force, and is only checked by the power possessed by the Head of the Government to prevent the introduction of any Bills but such as he approves—this power is sometimes ineffectual, and it being open to the members to propose amendments, occasion is offered for party feelings to operate, and the consequence of this state of things is that in every question at all partaking of a popular character, the unofficial members, with but one exception, are usually opposed to it.

The power which a Party has thus become possessed of, contrary as it would seem to the wishes and intentions of His Majesty's Government, is of no small magnitude. By the 9th Geo. IV., c. 83,¹ the appropriation of all the Revenue of N.S.W. is confided to the Governor acting with the advice and consent of the Legislative Council. These Revenues amounted in the last year to £120,000 exclusive of the income of Crown Lands and Droits of the Crown. The revenue this year is estimated at the same sum, and for the next at £123,000. It appears then to be deserving of the fullest consideration whether a power so large in itself and in its exercise by the unofficial members attended with such little responsibility can with

¹ 9 Geo. IV, cap. 83, was the Act under which New South Wales was governed from 1828 to 1842. It enlarged the Legislative Council, required the Governor to publish drafts of Bills eight days before their introduction, and deprived him of the power to pass laws without the assent of a majority of the Council. It also facilitated the introduction of trial by jury.

advantage or safety be lodged in their hands. The experience I have had the last session, and the disposition manifested by the Council in certain cases, have tended strongly to increase a mistrust which I had previously formed of the expediency of confiding so much irresponsible power to so small a number of persons, who by combination may at least defeat the objects of the Government, if they cannot secure their own. . . .

The mistrust of the Legislative Body which is entertained by a large portion of the people, including, in the number, persons of integrity, wealth, and industry, appears in the numerous Publications which issue from the Colonial Press. The Press of this Colony is free, and may therefore be supposed to speak generally the sentiments of the Public which supports it; and as it puts forth eight newspapers in the course of the week, each at so low a price as to leave it in the power of almost every one to purchase, it follows that it exercises a great influence over the whole of the reading, as well as the uninstructed classes of the population. One of the primary objects of appointing a Legislative Council was to give the Government a wider and firmer basis, on which to rest; to secure a point of contact with the colonists from which it might derive wholesome counsel and public support. But by the present constitution of that Body this object not only fails, but a contrary effect is frequently produced. It would therefore tend to facilitate the operations of Government, and lighten the weight of responsibility laid upon the Executive, if some portion of popular sentiment were infused into the Council. This, however, cannot be effected but by removing some of the present members, which would be deemed arbitrary, or by their resignation, which is improbable, or by amendment of the N.S.W. Act, which His Majesty's Government would probably desire to avoid.

I would propose as a partial remedy for the evils complained of, to open the doors of the Council Chamber to as many strangers as might be conveniently admitted; but to this measure there are some weighty objections. I will mention one. The Act of Parliament requires the Governor to preside at all meetings of the Council, unless prevented by illness or other adequate cause. It is necessary and useful that in a Council formed for enacting Laws, the projects and measures of the Government should be freely canvassed, and when the discussions are open to the Public, it is almost certain that a double portion of scrutiny will be exercised, and a considerable force of expression employed in canvassing those measures. This is amongst the advantages to be expected from open discussion, but it does not, I believe, happen in any Assembly of the kind which is open to the Public, that the Governor or Ruler of the State is compelled to preside, when measures of the Government are under discussion. In his character of President, the Governor cannot debate;

and if this privilege were allowed him, he could not exercise it without loss of dignity. To be present and silent, and acting as a Moderator when his own character and conduct are being discussed, is a condition to which no person should be reduced—and more especially one, who, to be of any use, should be regarded by the Public with deference and respect.

. . . If I might venture to propose that remedy, which, under all the circumstances of the case, appears to me to be most free from objection, and calculated to afford the greatest relief, I would suggest the enlarging by Act of Parliament of the present Council to about 24 members, two-thirds of which should be elected by the Colonists for the most populous Districts in a given proportion according to the number of the Inhabitants, whilst the remaining third and the President should be named by the Crown. At the expiration of four years, there should be a new election and nominations. Professing that a Council so constituted is an approximation only to a representative form of Assembly, and that it is intended to be temporary in its duration, I would confine the eligibility of the members to persons who had arrived free, or who were born within the Colony—but extend the right of election to all persons qualified to serve as jurors. The qualifications of the latter dependent on property are already fixed by law at a much higher rate than they are in England, and a desire has been expressed by some persons here to raise them still higher. The qualification by property now established by law is a clear income arising out of land or other real estate of at least £30 p.a., or a personal estate of at least £300. I do not think that limiting by Act of Parliament the eligibility of the candidate in the same way that it is limited in Canada and Newfoundland—namely, to persons who have never been convicted of felony or any transportable offence—would be received with an ill grace by the generality of the colonists, nor even by the better thinking part of the Emancipists, few of whom stand in that relative position to the Electors as to be likely to be returned, even if eligible, to become members of the Legislative Council.

I would beg leave to add that this Colony is so rapidly increasing in population and wealth that the period cannot be much longer delayed, when the voice of the colonists for a Legislative Assembly will be forcibly urged upon Her Majesty's Government. It becomes then an important question of present expediency, whether it may not be better to effect a change in the gradual manner I have suggested, than to delay it until a much greater alteration in the Institutions of the Country will become inevitable. . . .

HOUSE OF COMMONS COMMITTEE ON LOWER CANADA
EVIDENCE OF MORIN (May 21, 1834) [EXTRACTS]¹

(*P. P.*, 1837, vii.)

Chairman.] 541. If the House of Assembly think the Legislative Council a body so mischievous as they declare in those Resolutions, do you know any reason why they should not desire at once to get rid of it entirely?—That subject has been discussed in the province, both in the House of Assembly and by the people; it has been considered that it would be better to have a Legislative Council; first, to assimilate our constitution as much as possible to the British constitution; secondly, to provide for the trial of impeachments; and thirdly, for a better revision of the laws, as it is well known that the longer bills are debated and considered, the more perfect they are. For my part, I was also of opinion that there might be some possible occurrences in which the public interests might not be represented by the House of Assembly with a correct view of the sentiments of the people, although I do not believe that such an error could last long. In that case an elective Legislative Council, springing also from the people, might better conceive and better represent its interests, so as to prevent any mischief, until the people might have an opportunity to elect better representatives, or to make their opinions known better to the representatives they had. Those might be reasons why an elective Legislative Council was considered better than having no Council at all.

549. Would not the having two chambers springing directly from the people make the Executive in fact dependent upon the people?—It would make the Executive responsible to the country, and we consider most distinctly that this must be the case.

¹ The Select Committee was appointed on April 15, 1834, its Chairman being the Judge-Advocate General, Mr. Robert Grant, Lord Glenelg's brother, who later in the same year became Governor of Bombay. Mr. Roebuck had asked for a general inquiry into Canadian government, but on the motion of Stanley, then Secretary of State, the terms of reference were limited to the grievances alleged in the Ninety-Two Resolutions of the Lower Canada Assembly and to the question how far the grievances complained of in 1828 had been redressed. Full information was laid before the Committee, which reported that the Government had spared no pains to remedy the grievances of 1828. As to the more recent demands of the Assembly, conversations between Spring Rice, who had by that time succeeded Stanley, and its representatives were initiated and seemed likely to produce some result; and it was deemed desirable not to publish the evidence at once.

Morin was one of the most popular and respected of the French Canadian leaders and had been sent over by the Lower Canada Assembly to present its case in England. After the rebellion of 1837-8 his essential moderation came into play and he became the most intimate associate of Lafontaine: on Lafontaine's retirement he became the leader of the French Canadian section of the Ministry, but early in 1855 he abandoned politics for the bench. His character was irreproachable, but he lacked the fire of Papineau and the vigour of Lafontaine.

550. Was it the opinion of the Assembly that they could not obtain good government unless they made the Executive dependent upon the people?—Certainly.

551. Under such a system of having the Executive dependent upon the people, and the two chambers elected by the people, what use could there possibly be in any connexion with the British Crown; what part could the King of Great Britain or the Ministry of Great Britain act, or how could they interfere with advantage in such a system?—The same part that they act here in Great Britain. The governor would then represent the King, and have all the powers of the King, both legislative, moderative and executive.

552. If every time he was of a different opinion from those popular bodies he was immediately subject to impeachment, or the different actions of popular bodies against a single man coming from the distance of so many thousand miles, do you think it possible that the government of a colony could be maintained for many years under such a system?—I have no doubt that it could; it is the true system established here, and no doubt the governors should be responsible.

553. Do you think that the action of the mother country upon a government of that description could be exercised with any advantage to it?—It could be exercised certainly within the proper limits, but it could not be exercised so easily in favour of a few and against the general interests of the people.

554. Do you think a Royal veto exercised upon this side of the Atlantic would be submitted to in the Canadas, if the two elected chambers were opposed to that veto?—Upon those matters I will refer to the practice which obtains here under the British constitution.

555. Supposing that veto was exercised frequently in spite of the feelings of the two Houses, do you think it ought to be submitted to?—If it was exercised too frequently there might be representations made on that subject, just as I believe they would be made here if the Executive were to oppose the wishes of the people, expressed during a great number of years in both Houses of Parliament. Here there is a responsible ministry; it would be right that there should be also in the colonies responsible governors and members of the Executive.

560. If you elected the second chamber, and found that having elected the second chamber the obstacle to the popular will was the sovereign power not elected, is it not in the course of reason natural that you would wish to proceed to elect also the sovereign power?—I have not heard many opinions expressed upon that subject, but I will take the matter even with a larger view. If in the course of time it was found that the interests of the colony were so widely extended, and so diversified, that a dependence on a government at a great distance could not provide adequately for the good government of the country, then it might be reasonable to suppose that, in

a friendly manner on one part and on the other, the necessary change would take place. This has been the result recorded by history in all times, and in this manner all nations have been formed. The powerful empire of this United Kingdom was a colony of Rome. But this question relates to a time that has not yet come, and the country has not expressed a wish for an immediate separation from Great Britain. As to what would be done under the circumstances alluded to I cannot positively say. But we are sincere in our wish to preserve the connexion between both countries, and it is for that we seek here the redress of abuses.

6

MINUTE OF ELLIOT ON SECOND REPORT OF LOWER
CANADA COMMISSIONERS (May 16, 1836) [EXTRACT]¹
(*C. O.* 42/267: *P. R. O.*)

The time has come when a choice must be made between concession or resistance, neither of them tacit, but one or the other avowed, active and immediate. After a brief, though better sustained struggle than ever was anticipated, the principle has triumphed, which has been so often and vehemently proclaimed by some Public Men in the Province—that every thing is to be expected from the fears of England, and nothing from her Justice. Seeing that part of the demands enforced in this spirit, involve a violation of honor and equity, and that the Choice is absolute between compliance with every demand on the one hand, or resistance on the other, the latter appears to me unavoidable; and the form in which the Commissioners recommend it the best that can be adopted. It is the most obvious first step, and if inadequate, the responsibility of more in the same direction may be left to any who compel them.

With respect to the demands for a Legislative Council to be chosen by the People, and an Executive Council to depend on the pleasure of the People's Representatives, it is evident that they would cause almost all power to centre in the Colony, but this is not a conclusive objection. The Mother Country can have no great Interest here in Power for its own sake; and if the state of the Pro-

¹ T. F. Elliot was Secretary to the Canada Commission sent out to inquire and report by the Melbourne Ministry on its return to power in 1835. Elliot was a clerk in the Colonial Office, which he had entered in 1825: soon after his return he was appointed Agent-General for Emigration, and later he became Chairman of the Colonial Land and Emigration Board and, in 1847, Assistant Under-Secretary of State—a post in which he exercised considerable influence in the department until his retirement in 1868. The Commissioners—the Earl of Gosford, Sir C. E. Grey, and Sir George Gipps—were all men of ability; but except in their recommendation that the Revenues Act of 1831 be repealed they did not agree amongst themselves, and the Government found in Elliot's letters and papers the clearest and most balanced account of the state of affairs.

vince were favorable, it might be the most convenient, as well as most liberal, policy of the Supreme Government to delegate to its subjects in the Colony, all the authority compatible with the Unity of the Empire. But if the Mass of the Inhabitants be as nothing in Politics, and if the leading men be unfitted for the exercise of independent power by national Jealousies, strong personal Prejudices, and freedom from the control of an impartial Public, it would be better for a great Country to renounce the connexion with such a people altogether, than abandon them, while under [its] nominal supremacy, to the confusion and violence of an attempt at self Government.

There is no denying the apathy of the larger part of the Population in Lower Canada on public matters: yet here, with a People so little awakened to the importance and responsibility of the Privileges they already possess, a large party cry out for heaping still more powers on them. They wish, they say, to see nothing to envy in the neighbouring States. I heartily join their wish. I wish they had not to envy the Enlightenment, the Enterprise, the Experience of centuries in managing their own Affairs, (for from the very first the Colonists of New England governed themselves in all internal matters) which reign in the Countries lying on one border:—but as to the form of Government, it ought to be a subject of daily thanksgiving with the Lower Canadians, that they have not a Machine which would crush them by the weight of Civic Responsibilities and duties, which it is beyond the Strength of the Country to bear.

This argument drawn from unfitness is liable to abuse; but the *Principle* is indisputable, and the only reasonable Question, whether, in point of *fact* it is justly applicable to any given People. On this Question, as regards Lower Canada, the conclusion seems to me certain,—that the Bulk of the People is not fit at present to be made to operate more than it does already, on the higher branches of Government. It is an anxious thing, as it is, to watch the working of the British Constitution in a place where public Opinion is so limited in Extent as here; but to try American Institutions under the same Circumstances, would appear to me desperate.

It is sometimes answered to arguments of this nature, that a people can only learn the use of political functions, like any thing else, by practice, and I admit it; but for this purpose the functions must be such that their consequences may be apparent, and comprehensible to those by whom they are performed. In Lower Canada we began at the wrong end. We introduced a Copy from the Model of King, Lords and Commons, and then expected to see an exact Counterpart of the Workings of English Society: we forgot the Public Spirit, the readiness to associate for common interests, the general efficiency which prevails in England in Political Matters; but were satisfied with calling on a helpless community to discharge one of the highest functions of popular Government. Taken in

a smaller Circle, similar Privileges might have been highly useful. Election of Officers in a Parish, where the evil result of every lazy or interested choice could appear before the voters in a palpable and corporeal shape, would no doubt have been an excellent School to form Freemen. But here they have Popular Power in one of its highest forms alone; the Scene in which their delegate acts remote; the effects of his proceedings distant in time and place, and difficult to disentangle from the general Mass of Events; in short the whole opportunity of experience such as presupposes a knowledge bordering on actual Statesmanship. When this Experiment has signally failed, it would be a strange attempt at improvement to confer powers on the People requiring still more Information and Reflection to understand the fruits of the mode in which they are employed.

There are considerations, which, in addition to the effects of the national divisions so forcibly alluded to in the Report, satisfy me that the Constitutional changes called for by the Assembly must be resisted; and consequently they concur in making me subscribe to the necessity of the measure which is recommended to His Majesty's Government.

(signed)

T. FREDK. ELLIOT.

7

MEMORANDUM OF RUSSELL FOR THE CABINET

(May 30, 1836) [EXTRACT]¹

(*Russell Papers: P. R. O.*)

It is not too much to say, that if the Commissioners, instead of being left to decide upon their own judgement the important question of the Legislative Council, (with every reason to suppose the Government averse to the Concession) had been distinctly informed that we did mean to agree to some measure of the kind which is demanded, and if they had been furnished with an explanation of the principles upon which we considered this subject should be dealt with, it would have been in their power not merely to have corrected the misapprehension which occurred, but to have prevented it from taking place, and (I firmly believe) to have obtained the concurrence of both parties in the Province in a measure for the amendment of the Constitution. The result of what has taken place is that the Government has lost the confidence of all parties. The difference in the tone of Lord Gosford's communications² and that

¹ There had recently been several Cabinets on Canadian affairs, and it had been decided to maintain the Revenues Act despite the Commissioners' advice; but the chief difficulty in the way of further concessions was, as it had been all along, the obstinacy of King William IV and the inertia of Lord Glenelg and the majority of the Cabinet, who were not disposed to bring pressure to bear. Thus all the efforts of the more liberal members, such as Russell and Howick, were rendered vain.

² Gosford was Chief Commissioner and also Governor of Lower Canada. He was

of the instructions has created a belief that we wished to get out of the Momentary pecuniary embarrassment in which we are placed by raising expectations on the part of the Assembly which we never meant to fulfil. It being perfectly notorious that there is no hope of an accommodation with the Assembly unless we are prepared to agree to a change in the Council, it was justly assumed that we had no right to authorize the Governor to hold the language he did, and to express such Confidence in the practicability of an amicable adjustment of the affairs of the province, unless we had determined upon doing that without which we were perfectly aware that there was no chance whatever of these anticipations being realized.

We have now still more strongly than before asserted publicly in the House of Commons our belief that existing differences may be set right,¹ and I contend that by holding this language we have in fact pledged ourselves to do that which can alone give us even the faintest hope of a reconciliation, and that if we are determined to resist that particular demand of the Assembly from which it is obviously impossible for it to recede, we ought at once to have come to Parliament for the means of carrying on the Government of the Province.

I object therefore most decidedly to sending out the dispatches which have been prepared (and which being to the same effect as what was stated in the House of Commons convey the same pledge) unless they are accompanied by another and confidential communication to the Governor directing him how he is to act with a view of fulfilling the expectation we shall raise. This communication should be in my opinion to the following effect—

The Government has not thought proper to adopt the Course recommended by the Commissioners, because we are of opinion that the measure which was suggested would have been an abandonment of all hope of carrying on the Government of the Province in concert with the Assembly. Events may ultimately render it necessary to submit to Parliament the question of what is to be done on the failure of every attempt to effect a reconciliation with the Provincial Legislature, but this is to be avoided until the very last extremity and that extremity does not yet seem to have arisen. The question upon which the Assembly cannot be expected to yield without some

a man of conciliatory temper, which, however, did not degenerate into mere weakness (see below, No. 11); but he hardly possessed the exceptional qualities at this time requisite in a Governor of Canada. He never held any other important office. ¹ The 'public assertions' were presumably those made by both Sir George Grey, the Under-Secretary for the Colonies, and Lord John Russell himself on May 16 in the course of a debate initiated by Mr. Roebuck. They were to the effect that the Government were anxious that the constitution should be in agreement with the sentiments of the Canadians, that the Constitutional Act of 1791 might well be capable of improvement, and that any alteration in the composition of the Legislative Council recommended by the Commissioners would be most carefully considered. Mr. Roebuck expressed satisfaction and Sir R. Peel some apprehension at the tone of these declarations.

concession is one on which neither the honor nor the interest of this country require us to refuse absolutely what is asked. The plan of nominating the Legislative Council can be shewn to be defective and not to meet with the entire approbation of any party in the province. The British Government is therefore desirous that the Commissioners should endeavour to ascertain whether the consent of both parties in the Province might not be obtained to an alteration in the Constitution of the Council, which, while it should give to that body a more popular and independent character, should not render it a mere echo of the Assembly, so that it might, in becoming more disposed in general to sympathize with the Assembly, become also more able to check it when disposed to act rashly and with violence, and a more efficient support to the Government than it can possibly be, while, as at present, it has no hold on the public confidence. The Assembly has not hitherto pledged itself to insist upon any particular mode of changing the constitution of the Council, although it has obviously pointed to one which would be most objectionable; it is therefore of the highest importance that, before it's leaders get wedded to a scheme which could not be agreed to, an attempt should be made to satisfy them by a change which instead of impairing the just authority of the Executive Government and rendering the constitution more democratic than at present, should on the contrary for all useful purposes strengthen the hands of the Government, and should create an effective check upon the now almost unbalanced power of the Assembly. To carry these views into effect it will be the duty of the Governor to make known the intentions of H.M.'s Government to the leaders of the different parties, not by any formal and official channel, but by private communications. The French party should be informed to what extent the Government is prepared to grant what they have demanded, and that what is withheld is so from no wish to interfere vexatiously in the internal management of the Colony, but for the purpose of enabling the Mother Country to exercise that authority, which it is of infinitely less importance to her interest than to that of the Province that she should possess, in order to be enabled to act as a mediator between contending parties and to ensure equal justice and equal protection to all.—The consequences of the prolongation of the existing differences, it should be shewn, can only be to throw the whole Province into confusion, and to compel the Imperial Parliament to choose between the two alternatives of suspending the constitution of 1791, or of withholding the protection of the British Crown, either being equally fatal to the French party, who in either case would find themselves deprived of all real power and influence, and either governed as a conquered province by this Country, or, what would be still worse, left at the mercy of the English population by which they are on all sides surrounded. Such

an appeal would probably not fail to produce some effect upon the popular leaders, but at the same time other means should be used to influence them should they continue obstinate; every effort must be made to enable the inhabitants of the Province generally to understand the views of the British Government; they should be shewn that we are prepared to concede that which ought to be conceded, but firmly to refuse going farther, and that the failure of the attempt to adjust the unhappy differences which have so long prevailed is only attributable to the Assembly.—The Constitutional powers of the Crown should be used to render the extreme measure of suspending the supplies as onerous to those by whom it is adopted as to the Government, and the Assembly should be shewn by a refusal of it's contingencies, including the salary of their agent, that the Crown has also a veto upon the issue of money from the public purse, and that they cannot stop a part of the public expenditure without at the same time having that part of it in which they are themselves interested placed under a similar check. If the effect of this policy should be to promote that reaction in public opinion which Lord Gosford describes as having already to a certain extent commenced,—a dissolution might probably be tried with success. If, on the other hand, no impression should thus be produced, and the Assembly should continue to be opposed to the Government, the time would then have arrived for submitting the whole case to Parliament.

While communicating in this manner with the French Party, the Governor should also enter into negotiations with the English Party. He should shew to its leaders that in agreeing to a change in the Legislative Council, means should be taken for securing to them due protection, not only by so contriving the Measure as to prevent the Council from being like the Assembly a mere representative of the French Democracy, but also by making a fairer representation of the English interest in the Assembly one of the conditions on which alone the proposed change in the Council would be sanctioned. It would with truth be represented to this party, that their interest would be at least as much promoted as that of the French by such an arrangement. . . .

LETTER FROM BALDWIN TO GLENELG (July 13, 1836)
[EXTRACTS]¹

(*Durham Papers: Report of Public Archives of Canada, 1923.*)

If it is the desire of the Mother Country, which I of course assume it to be, to retain the Colony it can only be done either by force, or with the consent of the People of Upper Canada themselves. I take it for granted that Great Britain cannot desire to exercise a Government of the sword, and that she will therefore only govern the Canadas so long as she can do so with the concurrence of the People—For the purpose therefore of continuing the connexion upon this footing it is absolutely necessary; First—That the political machinery of the Provincial Government should be such, as shall work harmoniously within itself, without collision between any of its great wheels; And secondly, That it should be such as that the People may feel that they have an influence upon it sufficiently powerful to secure attention, not only to their abstract rights, but to their feelings and Prejudices; without regard to these you can govern no people satisfactorily or successfully—That the Constitution of Upper Canada administered upon the principles heretofore applied to it, has failed to accomplish either of these objects a very cursory view of the history of the Colony, without reference to Your Lordship's late dispatch, will sufficiently demonstrate. . . . Four remedies have been proposed; first, to make the Legislative Council elective; Secondly, to abolish it; Thirdly, to concede certain isolated points, which have been earnestly called for by the Representatives of the People, and fourthly, to put the Executive Council permanently upon the footing of a local Provincial Cabinet, holding the same relative position with reference to the representative of the King and

¹ Robert Baldwin was the son of William Warren Baldwin, a doctor of Irish origin. Father and son were the first to advocate the principle which came to be known as responsible government. On the arrival of Sir Francis Head as Lieutenant-Governor of Upper Canada, Robert Baldwin was offered, and accepted, a seat in the Executive Council. Head had no intention of granting responsible government, and after less than a month's trial Baldwin found his position impossible, and he and one colleague resigned. They were supported by the Assembly, but Sir Francis Head appealed to the country and obtained a majority. Baldwin came to England on an endeavour to win the support of the Colonial Office as against the Lieutenant-Governor, but his mission was ineffectual. From this time until the mission of Lord Durham in 1838 he took no active part in politics; but Durham's advocacy of responsible government naturally brought him to the front again, and he soon became the accepted leader of the Upper Canada Reformers. We shall see him again—admitted to the Executive Council with his French associates by Bagot in 1842 (No. 18), breaking with Metcalfe on the question of responsible government and accused by him of disloyal views (No. 22), and returning to power in 1848 as the leader of the Upper Canada section of Elgin's new Ministry after the triumph of the responsible government policy (No. 31). He retired from politics in 1851, having somewhat lost his grip after his great aim had been achieved. He was a man of high personal character and the very soul of moderation.

the Provincial Parliament, as that on which the King's Imperial Cabinet stands with respect to the King and the Parliament of the Empire, and applying to such provincial Cabinet both with respect to their appointment to, and continuation in, office; the same principles as those which are acted upon by His Majesty with respect to the Imperial Cabinet in this Country.—

The two first remedies, if not inexpedient, I look upon as at least wholly insufficient to accomplish the objects desired:—the third, as equally insufficient of itself to do so; and the last as the only remedy by the application of which those objects can be attained and upper Canada preserved to the Mother Country—

First, the making the Legislative Council elective I look upon as inexpedient; among other reasons because I am of opinion that the institutions of every Colony ought as nearly as possible to correspond with those of the Mother Country—The Upper House of the Imperial Parliament not being elective I would therefore not have the Upper House of the Provincial Parliament elective unless under the pressure of an absolute necessity.—I moreover disapprove of the adoption of such a measure at all events at present,—because it is as a general principle inexpedient to make an alteration in the forms of the constitution of any Country, until the necessity for such change has been demonstrated, by putting into full and efficient operation, the existing constitution in all its details; which cannot be said to have been done with that of Upper Canada, until the Executive Council is practically converted into a provincial Cabinet for the local and internal Affairs of the Province:—Had this been done ten or twelve Years ago when the Executive first found themselves in a decided and uniform minority in the Provincial Parliament, I am satisfied that an elective legislative Council would not now have been thought of, and I am not without hopes, although they may prove fallacious, that, it is not yet too late by the adoption of this principle to render such change in the constitution unnecessary. But at all events as a remedy amounting merely to the application of an English principle to the constitution as it stands, it ought yet to be tried fully and fairly, previous to resorting to the more violent measure of a legislative change in the Charter. It is but right however to inform Your Lordship that altho' my opinion of the inexpediency of such a change in the organization of the Legislative Council is concurred in by many, I believe a considerable majority of the Reformers of the Province (which every day's delay is increasing) think that such a change will ultimately be found necessary.—After the intimation contained in Your Lordship's despatch and out of regard to the opinions entertained by us, who in this point differ from them, they were however willing to drop the question of an elective Legislative Council until the Constitution as it is should have been fully and fairly tested by the application of those principles which have been

found so valuable and so necessary in the successful working of that of the Mother Country;—And whatever may be the opinion entertained as to the expediency or in expediency of making the Legislative Council elective I believe no doubt exists of such change being found wholly insufficient of itself to accomplish the two objects desired—The making the legislative Council elective might convert that body into an additional engine of hostility against the executive Government, but could never supersede the necessity for the concession of the Principle contended for.—Resistance to the concession of this Principle may drive the Reformers into Unanimity in the call for an Elective legislative Council, but it will only be as a means and not as an end—And when this state of things arrives, be assured that England will have lost the last hold upon the *Affections* of the great mass of the people of Upper Canada—That such change in the constitution of the Legislative Council would not be found to produce harmony between the three branches of the Provincial Government, will be readily admitted when it is remembered that the Collision which has produced so much evil has not been merely between the Representative Branch of the Government and the Legislative Council, but between the Representative Branch and the Executive Government; the complaint has always been of the influence of the Executive upon the Legislative Council, and not of the influence of the Legislative Council upon the Executive Government.—It were idle therefore to expect unanimity while you leave untouched the main source of discord.

Secondly—To the proposal to abolish the Legislative Council altogether, most of the reasons against making it elective will equally apply: it may in addition be urged that a second chamber of some kind has, at least in modern constitutional legislation, been deemed essential to good Government; It has not been dispensed with in any of the new constitutions of any of the neighbouring Republics; and has I believe in more instances than one been not long since adopted as an improvement to the political machinery of Government where the previous constitution had contained no such provision. And moreover, the abolition of the Legislative Council has not been asked for, by any portion of the Canadian People.—

As to the third remedy proposed, that of conceding certain isolated points as they arise, and are called for; I will only say, that the whole history, not only of the Canadas but of the Colonies in general shews that such course as a means of producing permanent satisfaction and harmony, has wholly failed;—nor indeed does it appear to me to require much consideration to convince any one of the insufficiency of this as a permanent remedy—In the first place such concessions are never made, and under the present system never will be made, until after such a prolonged struggle, that when they come, they are always felt to have been wrung from the Government, and not to

have proceeded from a sense of justice or expediency of granting them.—They never remove the distrust which is felt of the Provincial Executive Government.—They leave untouched the great evil of the disadvantageous comparison which is constantly before the eyes of the people when they look at the administration of the Imperial Government by the King, and that of the Provincial Government by his representative—They see the former always so far consulting the wishes of his people as never to keep in his Councils persons who have not the confidence of their Representatives; while in the administration of their own Government they see the mere Representative of that Sovereign constantly surrounded by those very individuals, of whom sometimes with reason, and perhaps sometimes without, they have become distrustful and jealous: And they very naturally ask the question, why are not our Representatives to be paid as much attention to by the King's Deputy, as the Representatives of our fellow Subjects in England by the King himself?—Astute reasonings may no doubt be framed, and fine distinctions drawn upon the subject but this is a plain common sense and practical view of it; out of which be assured it will be impossible ultimately to persuade the Yeomanry of Upper Canada—You may indeed, by strenuously insisting on the inapplicability of this principle to their situation, drive them to insist on a more extended system of elective institutions.—By refusing what no one can deny to be an English principle;—the same upon which Your Lordship, and Your Colleagues were selected to fill the high and important situations which you hold in His Majesty's Councils; the same by which you at this moment continue to retain those places,—you may indeed divert their attention to another Quarter, and drive them to call for the power of electing their own Governor, and their own Executive; but you never can persuade them to abandon the object of obtaining more influence, than they now possess, through their Representatives, in the administration of the Executive Government of the Colony.—

I now come to the consideration of the fourth remedy, which consists of nothing more than having the provincial Government as far as regards the internal affairs of the Province, conducted by the Lieutenant Governor (as Representative of the paramount Authority of the Mother Country) with the advice and assistance of the Executive Council, acting as a Provincial Cabinet, and composed of Men possessed of the public confidence, whose opinions and policy would be in harmony with the opinions and policy of the Representatives of the People. This, as I have before said, I look upon not only as an efficient remedy, but as the only efficient one that can be applied to the evils under which the Province is at present suffering—

I shall avoid troubling Your Lordship with any observations upon the construction of the Constitutional Act; because not only has the subject been already fully entered into, in the Report of the Select

Committee of the House of Assembly; but I sincerely believe matters to have arrived at that point when it really signifies nothing whether it be or be not *required* by the Charter. The only question worth discussing is, whether it is or is not *expedient* that the principle should be applied to it: And for this purpose all that it is necessary to ascertain in the first instance is, that there is nothing in the Charter which forbids the application of such a principle. That this is the case, as it has never been denied, and as the principle in its practical application consists in fact merely in the ordinary exercise of the Royal Prerogative will, I take it for granted, be readily admitted.—The Concession of the principle therefore calls for no legislative interference;—It involves no sacrifice of any constitutional principle,—It involves no sacrifice of any branch of the Royal Prerogative,—It involves no diminution of the paramount Authority, of the Mother Country; It produces no such embarrassment to the Home Government, as in the present state of the Imperial Parliament, the attempt to grant an Elective Legislative Council would be almost certain to do:—From being an English Principle, it would strengthen the Attachment of the People to the connexion with the Mother Country; and would place the Provincial Government at the head of Public opinion, instead of occupying its present invidious position of being always in direct opposition to it.

But in addition to these Advantages, which this remedy possesses in an eminent degree over all others, that have been suggested, it would be found effectual for the purposes desired.—

Permit me to restate those objects,—they were first, that the different branches of the Provincial Government should be brought to act in harmony with each other; and secondly, that the People should feel that they had sufficient influence upon their Government to secure attention to their rights,—and respect for their feelings and prejudices: I am of opinion that this principle if fully and fairly acted upon, would affect both those objects.—An Executive Council constituted upon this principle, would from their situation as confidential advisers of the Lieutenant Governor necessarily have great influence in the House of Assembly: Their weight in the Country, as well as their confidential situation, about the person of the Lieutenant Governor, would give them great weight in the Legislative Council: And they would of course from both circumstances possess great weight with the Lieutenant Governor. They would generally if not uniformly be in one or other House of Parliament, and would therefore form a centre of Union, and in fact act as a sort of balance Wheel to the constitution. The measures which they brought forward, as they would necessarily have the previous sanction of the Lieutenant Governor, would come recommended on the one hand by all the weight of executive influence, and on the other by the support of those to whom the people both from habit and principle had been accus-

tomed to look with confidence.—The people would therefore be predisposed to receive their Measures with satisfaction and confidence, as the fruit of the advice of their friends; and the Legislative Council as recommended by the servants of the Crown, whose interests as well as duty it was, to recommend nothing but what was safe, as well as satisfactory to the Public.—What was not deemed wise or prudent to adopt, instead of being suffered to pass heedlessly through the Assembly, and left to be thrown out by the Legislative Council or negatived by the Veto of the Lieutenant Governor would be met in the first instance and resisted; because every step that such proposal advanced would increase the probability of ultimate embarrassment to the Executive Council, and to those whose confidence they enjoyed; who would of course be always the most powerful Party in Parliament.—Such an Executive Council would necessarily feel a moral as well as a political responsibility for the success of their Measures.—Their permanent connexion with the Country as well as a sense of duty and natural desire to retain office, would necessarily insure their utmost exertions, not only to procure harmony but to produce good government.—The People when they saw that the King's Representative would not retain Men in his Councils who have forfeited their confidence, would be the more careful in the exercise of the Elective Franchise, and far less likely to withdraw their confidence from those in whom they had once found reason to place it.—

That the adoption of this principle would without vesting the Election of the Executive Council in the People place in their hands such an indirect influence upon it, as would be sufficient to secure attention to their rights, feelings, and prejudices, is sufficiently evident; because if such attention were not paid by those in the confidence of the Lieutenant Governor, the people have only to return to the next Parliament, men who would not give them parliamentary support, and they would necessarily have to resign; and the Lieutenant Governor to appoint others who possessed the confidence of the Representatives of the People.—A. B. and C. would go out of office, and D. E. and F. would come in; the Lieutenant Governor always retaining the Power of calling into Action his superintending control with respect to the measures of both the one and the other: and the effect produced upon the interests of the Mother Country, being none other than that the change would give satisfaction, and, at least most probably, insure good government in the management of the internal affairs of the Colony.—

But it will be said that even under this system, collision may arise.—The Lieutenant Governor may disapprove of the measures recommended by his Council, and find it impossible to form an Executive Council which would secure parliamentary support upon any other terms than concession; or the Executive Council may find it impossible to bring the two houses to an Understanding upon every

Measure:—To which I reply, that the practical working of the principle would be sure to postpone such collision to the latest possible period: That the intermediate steps of a change of the Executive Council, and of appealing to the people by a dissolution, would at all events give the Home Government the great advantage of not itself coming in collision with the People till the last moment, and of ascertaining the exact point where the question of Concession would become one merely of expediency; in addition to which I would remark that this objection is equally applicable to the practical working of the Principle in this Country; with this great difference, that supposing the people of England to be wholly unreasonable in their demands, the Crown has in point of fact no means of resistance; whereas in the case of a Colony there is as a last resort the application of that power, which, independent of the influence which a knowledge of the possession of it, would necessarily give to the Representative of the Home Government, in the course of the previous contest, will always rest in the hands of the Parent state to be exercised when all other means fail: So that were the principle a mere experiment, to be tried now for the first time, a colony would be a safer subject for such experiment than the Mother Country. With respect to collision between the two houses, such under the operation of this principle is surely not more likely to happen in the working of the Upper Canada Constitution, than in that of the Mother Country; and the utmost that can be done by the most perfect system is to guard against the probability,—not the possibility of difficulties:—Such collision might happen even between two elective bodies, and in point of fact does happen, not only occasionally but every day under the constitution as at present acted upon; and at the worst such a case would be open to be disposed of, in the same way as a similar one in England; with this difference only, that the appointment of a batch of new legislative Counsellors, is not subject to the same difficulty that the creation of New Peerages is; and as the Seats of legislative Counsellors are not hereditary; and finally the ultimate resource of making the legislative Council elective, if indeed it be still found necessary to do so, will be as open to be taken as ever.—

It is objected that the concession of this principle is inconsistent with the preservation of the paramount Authority of the Mother Country. With respect to this, I would remark that it does not appear to be more so than the concession of the power of legislation; in the one case you vest the power of legislating on the internal Affairs of the Colony in a local Parliament with the consent of the King's Representative; in the other, you leave the Executive Power in the hands of the King's Representative requiring only that it should be exercised with the advice of persons named by himself but possessed of weight and influence with the people whose local Affairs he is deputed to administer.—

It is objected, that it would interfere with the patronage of the Lieutenant Governor; this also appears to me to be an error; the power of appointment to office would remain in the Lieutenant Governor as at present. The right of advising is all that is claimed for the Executive Council: If such be considered an interference, it is such as can be exercised, alone to prevent mischief. But suppose that it actually deprived the Lieutenant Governor of every vestige of patronage; the simple question is, is the patronage in the hands of the Lieutenant Governor the great object for which England desires to retain Upper Canada. If this be indeed the chief or only object, let it be candidly avowed: I will only remark that the People have been hitherto induced to believe that the Home Government were actuated by other and loftier motives.—

It is objected that it would lessen the responsibility of the Lieutenant Governor to the Home Government: this is a mistake, every Act of the Provincial Government would be the Act of the Lieutenant Governor requiring his full consent quite as much as at present.—How would he be less responsible then to the King and Parliament of the Empire because he acted upon the advice of those who had the confidence of the People? The Lieutenant Governor is the connecting link between the Government of the two Countries.—You cannot make him responsible to the People of the Province, such would be wholly inconsistent with the respect due to the Sovereign whom he represented, and fatal to the connexion between the two Countries.—The proper place for his responsibility to rest is, in England.—But you must give the people such an influence upon their Executive Government as will prevent the constant jealousy to which it is at present exposed.—You can do so only either by permitting a direct influence, by vesting the election in the hands of the people, which I look upon as inexpedient and unsafe; or you must give them that indirect influence, which they see constantly exercised by their fellow subjects through their Representatives in this Country.

With respect to the objection, that the application of this principle would lead to the Executive Council falling into the hands of a few metropolitan families, I would remark that it seems much less likely to have that effect than the present system; and that if it had, it would be an evil for which the people would have to blame themselves only; and therefore not one, which could be attributed to the Home Government or their Representative the Lieutenant Governor, and above all, one the remedy for which would be in their own hands.—The same may be said as to the rather inconsistent objections, that it would lead to too many changes, and that there are not persons enough in the Province qualified to fill the office of Executive Counsellors:

But it is pretended that the People of Upper Canada are opposed to having this indirect influence upon the Executive in the hands of

their Representatives—Premising that the real Value and importance of the principle itself cannot depend either upon what the People really think upon the subject, or what they may, by violence and misrepresentation, be persuaded to afford reasons for supposing that they think;—I proceed to remark that the proposition appears absurd on the face of it: It is like an attempt to make one believe that a thirsty man has an objection to receive Water, or a hungry man food. . . .

But should Sir Francis Head¹ by violence and intimidation unhappily succeed in procuring a Majority in the next Provincial Parliament, do not suppose my Lord that there will be less necessity for the application of the principle; new difficulties will daily spring up, and when once the delusion under which the popular mind has been acted upon has passed away, it will return with double pertinacity not I fear merely to the principle now asked for, but to Changes of a more extensive and organic character; Time I am persuaded, will convince Your Lordship of this; I tremble lest the Conviction should arrive too late to prevent the consequences which I deprecate.

To conclude my Lord, I most earnestly recommend not only as *expedient*, but *necessary* for the preservation of the Connexion between this Country and Upper Canada:—First, That His Majesty's Imperial Government should at once adopt the final determination, that the Provincial Government as far as respects the internal Affairs of the Province, should be conducted by the Lieutenant Governor, with the Advice and Assistance of the Executive Council, acting as a Provincial Cabinet;—And that the same Principle on which His Majesty's Cabinet in this Country is composed, should be applied and acted upon in the formation, continuance in office and removal, of such local Provincial Cabinet;—Secondly that this Resolution of the Home Government should be inserted in the shape of a Specific Clause in the general Royal Instructions for the Government of the Province, and formally communicated to both houses of the Provincial Parliament; And Thirdly—That Sir Francis Head should be recalled, and a Successor appointed who shall have been practically acquainted with the working of the Machinery of a free Representative Government.—

(signed) ROBT. BALDWIN.

¹ Sir Francis Bond Head's career as a colonial governor was short, lasting only from January 1836 to March 1838. Previously he had been in turn an officer in the Royal Engineers, manager of a South American Mining Association, and Assistant Poor Law Commissioner for Kent: afterwards he was chiefly known as a Quarterly Reviewer. Few Colonial Governors have ever led the Colonial Office such a dance as he did. Immediately after his arrival in Upper Canada he made up his mind that the great object was to crush the 'democratic' party at all costs, and at first—thanks to skilful tactics and no small insight into mob psychology—he achieved extraordinary success; but his success turned his head, and the Colonial Office finally lost patience with his extravagant language and insubordinate conduct and recalled him. The family were originally Portuguese Jews named Mendez and came to England with Catherine of Braganza.

DESPATCH FROM CAMPBELL TO GLENELG

[EXTRACT]¹

(C. O. 188/54: P. R. O.)

Fredericton N.B.
30th April 1836.*Private*

MY LORD,

The two Members of the House of Assembly, Messrs. Crane and Wilmot,² who have been chosen as a Deputation to proceed to England with an Address to His Majesty's Government for the redress of Grievances, together with other subjects which I understand are entrusted to them, have embarked—or are on the eve of departure—from this Country.

It may not be amiss, thus privately to make your Lordship acquainted with the characters of these persons. Mr. Crane, a Merchant and Storekeeper in the County of Westmoreland is a man possessed of a considerable share of shrewdness and low cunning, very persevering and plausible withal, but most uncertain in his political principles. Mr. Wilmot is a young man of prepossessing appearance, a Barrister at Law, by no means void of talent, but unfortunately for himself he misapplies it in the pursuit of that Phantom—low popularity—seeking to obtain for himself the vain appellation of *The Man of the People*—to his mischievous Counsel is chiefly attributed the opposition made to the Collection of the Quit Rents . . . ; driven however from that Position by the settlement of that question, and still acting on a wish to create excitement, aided by a few kindred spirits in the House of Assembly, he became the principal framer of all the Resolutions upon which the present address is founded; although his popularity is much on the decline, yet I cannot help considering him, as far as his influence among the Lower Classes goes, a most dangerous subject.

¹ Sir Archibald Campbell was Lieutenant-Governor of New Brunswick from 1831 to 1837. He had greatly distinguished himself as a soldier in India, in the Peninsula, and finally as Commander-in-Chief in the first Burmese War; and afterwards he governed the ceded provinces of Burma for three years. But he was no more successful than most other military Governors in dealing with a Colonial Representative Assembly or in understanding a colonial community.

² William Crane was not a man of particular note. Lemuel A. Wilmot, who was only 27 at the time, was already the leading Liberal of New Brunswick, and remained such until his appointment to the Bench in 1850, though it was rather as an orator than as a thinker that he excelled. After Confederation he became the first Lieutenant-Governor of New Brunswick. In spite of the tone of Sir A. Campbell's letter the delegates succeeded in their mission, and Lord Glenelg paid a tribute to the ability, tact, and moderation with which they had conducted it. Rather than introduce the reforms, Sir A. Campbell resigned in the following year, and they were introduced by his successor, Sir John Harvey.

I understand that the private instructions of the Delegates direct them to go every possible length in their negotiations for obtaining the control of the Casual Revenue for the space of *Ten years*—but why, when this Province is in such a flourishing state limit the bargain (should such a proposition be at all entertained) to any specific number of years? Such a measure would bring upon the Province the most serious consequences—during these Ten years the House of Assembly would of course be desirous to carry the sales of Land and Timber to the greatest extent, even to the exhaustion of both, and any measure on the part of the Executive to check this, would lead to interminable disputes, and discord.

The deputation will also be charged to use every means for a change in the Councils in the hope of getting in Men who will be more subservient to their unconstitutional views and principles, for as I have already stated to your Lordship, under whatever guise they may cloak their proceedings, I feel satisfied in my own mind that their ultimate object is, the abridgement of Royal Authority. . . .

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ADDRESS OF HOUSE OF ASSEMBLY OF NOVA SCOTIA TO THE KING (17 April 1837)

(*P. P.*, 1839, xxxiv.)

To the King's most Excellent Majesty.

The humble Address of the House of Representatives in General Assembly, for the Province of Nova Scotia.

May it please Your Majesty,

We, Your Majesty's dutiful and loyal subjects, the representatives of Nova Scotia, while approaching the Throne to ask for a redress of grievances, tender the assurance of the unabated attachment of those we represent to Your Majesty's person and Government. The people of Nova Scotia, when anything trenches upon their rights, or retards their prosperity, turn to their Sovereign, as the father of all his people, wherever their lots may be cast; and whose affection is not diminished by distance, nor bounded by the four seas of Britain, but extends to the most remote limits of his empire, rearing, wherever practicable, institutions favourable to freedom, and fostering that love of justice, that nice sense of the relative duties of the Government and the governed which distinguishes the parent state. Nor is their confidence in Your Majesty diminished by the reflection that in early life you visited Nova Scotia,¹ and in maturer years have sanctioned those vast reformatory changes at home, which embolden them to seek for a revision of their institutions, and the introduction

¹ The King's visit to Nova Scotia had presumably been in 1787 when he was in command of the *Pegasus* and sailed from the West Indies to England via Quebec.

of those checks and guards, without which they feel that private happiness and public liberty can never be secure.

In the infancy of this colony its whole government was necessarily vested in a governor and council; and even after a representative assembly was granted, the practice of choosing members of council almost exclusively from the heads of departments, and persons resident in the capital, was still pursued, and with a single exception has been continued for the last 30 years. The practical effects of this system have been in the highest degree injurious to the best interests of the country, inasmuch as one entire branch of the legislature has generally been composed of men, who, from a deficiency of local knowledge, or from the natural bias incident to their official stations, were not qualified to decide upon the wants or just claims of the people, by which the efforts of the representative branch were, in many instances, neutralized or rendered of none avail.

Among the many proofs that might be adduced of the evils arising from the imperfect structure of the upper branch, it is only necessary to refer to the unsuccessful efforts of the Assembly to extend to the outports the advantages of foreign trade, to the enormous sums which it was compelled, after a long struggle, to resign for the support of the customs establishment, to the difficulties thrown in the way of a just and liberal system of education, and to the recent abortive attempts to abolish the unconstitutional and obnoxious fees taken by the judges of the Supreme Court.

While the population of this province is composed, as it appears by the last census taken in 1827, of 28,659 members of the Episcopal Church, and 115,195 Dissenters, which proportions may be assumed as fair at the present time, the appointments to the Council have secured to the members of the Church, embracing but one-fifth of the population, a clear and decided majority at that Board. They have now in that body nine members. The Presbyterians, who outnumber them by about 9,000, have but two; the Catholics, who are nearly equal, but one; while the Baptists, amounting by the census of the same year to 19,790, and the Methodists to 9,498, and all other sects and denominations, are without any of their members in a body whose duty it is to legislate for all. The Catholic bishop has no seat at the Council Board, and clergymen of that and other denominations are, as they ought to be, excluded, yet the bishop of the Episcopal Church has been since the year 1809, and still is a member.

Your Majesty will readily perceive that, whether designed or not, the mere circumstance of one body of Christians having such an overwhelming influence in the Legislative and Executive Council, has a tendency to excite a suspicion that, in the distribution of patronage, the fair claims of the dissenting population, founded upon their numbers, respectability and intelligence, are frequently over-

looked. This is not the only objection urged by the people of Nova Scotia against the composition of the Council, and to which it is our duty to call Your Majesty's attention. Two family connexions comprehend five of its members, and until very recently, when two of them retired from the firm, five were copartners in one banking establishment; to this latter circumstance has been attributed the failure of the efforts of this Assembly to fix a standard of value and establish a legal currency.

The people of this province have for years asserted, and still most respectfully assert, their right to control and distribute the casual and territorial revenues of the country, whether arising from the fees of office, the sale of lands, or the royalty paid upon the produce of the mines, as also the amount of the old Crown duties. The lands of the province are in effect mortgaged to pay to the commissioner a salary out of all proportion to the duties he is called on to perform. Since his appointment in 1831, 5,624*l.* 8*s.* 10*d.* have been received on account of 107,923 acres of lands sold, and the whole amount, except 216*l.* 8*s.* 0 $\frac{1}{4}$ *d.* has been taken to pay the Commissioner and defray the expenses of the department, while all the mines and minerals of the province are held under a lease for 60 years by a wealthy English company, without the consent of, and independent of all control by, the representatives of the people.

Apart from the mere question of judges' fees, this Assembly is convinced that the presence of the chief justice at the Council Board has a tendency to lessen the respect which the people ought to feel for the courts over which he presides, while the position occupied there by the collectors of the customs and the excise is also unwise.

Though this Assembly might illustrate the evils arising from the structure of the Council by other examples, sad experience has taught them that it is not always safe to attempt to convey to the foot of the Throne representations that are disagreeable to its members. A year's revenue, and all the appropriations, were sacrificed in a protracted struggle with the upper branch in 1830; and during the present Session the Assembly found itself compelled, by a regard to the public interest, to rescind a series of resolutions, passed after grave deliberation, and comprehending many of the topics touched on in this address. The evils arising from the structure of the Council are heightened, and rendered more injurious by the practice adhered to by that body, of shutting out the people from their deliberations. This practice they still maintain, although it is opposed to that of the House of Lords in England, that of the Legislative Councils of Lower Canada, New Brunswick, and Newfoundland, and notwithstanding the murmurs and complaints of the people for a long series of years, and the representations and remonstrances of this Assembly.

While this House has a due reverence for British institutions, and a desire to preserve to themselves and their children the advantages

of the constitution, under which their brethren on the other side of the Atlantic have enjoyed so much prosperity and happiness, they cannot but feel that those they represent participate but slightly in those blessings. They know that the spirit of that constitution, the genius of those institutions, is complete responsibility to the people, by whose resources, and for whose benefit, they are maintained. But in this colony the people and their representatives are powerless, exercising upon the local Government very little influence, and possessing no effectual control. In England, the people, by one vote of their representatives, can change the ministry, and alter any course of policy injurious to their interests; here the ministry are Your Majesty's Council, combining legislative, judicial, and executive powers, holding their seats for life, though nominally at the pleasure of the Crown, and often treating with indifference the wishes of the people and the representations of the Commons. In England, the representative branch can compel a redress of grievances by withholding the supplies; here, they have no such remedy, because the salaries of nearly all the public officers being provided for by permanent laws, or paid out of the casual and territorial revenues, or from the produce of duties collected under Imperial Acts, a stoppage of supplies, while it would inflict great injury upon the community, by leaving roads, bridges, and other essential services unprovided for, would not touch the emoluments of the heads of departments in the Council, or of any but a few subordinate officers of the Government.

As a remedy for these grievances, we implore Your Majesty to grant us an elective Legislative Council; or to separate the Executive from the Legislative Council, providing for a just representation of all the great interests of the province in both; and by the introduction into the former of some members of the popular branch, and otherwise securing responsibility to the Commons, confer upon the people of this province what they value above all other possessions, the blessings of the British Constitution.

17 April 1837.

GEORGE SMITH, Speaker.¹

¹ This address was moved, and doubtless composed, by Joseph Howe.

PRIVATE AND CONFIDENTIAL DESPATCH FROM
GOSFORD TO GLENELG (September 8, 1837) [EXTRACT]

(*Russell Papers : P. R. O.*)

We can now make no terms with Mr. Papineau:¹ you must either put him down, or submit to let him put you down. There is no halting between two opinions. By at once increasing the power of the Executive, and suspending the Constitution, you paralyze the designs of these mischievous men; it would establish confidence in the minds of those disposed to peace and good government, and at no distant period you might be solicited to restore the Constitution to the Province, under arrangements better calculated to afford satisfaction than could be accomplished by any effort or proposal in the present state of things; for until you nullify Papineau's power, you can never be in a position to treat on anything like fair and liberal terms with a man of his extravagant, uncompromising, destructive views, exercising, as he does, complete control over the minds of many who have been too long accustomed to be under his yoke. As I stated in former letters, I do not expect any serious commotion; at the same time, when I see so many clever unprincipled engines in action, yielding implicit obedience to the mandates of such a man as Mr. Papineau, it is impossible to set limits to the extent of mischief they may construct. The jealousy that exists between the *two origins*, is also a powerful instrument in the hands of a convention or central committee, as before alluded to, and corresponding, as they no doubt do, with various parts of the Province. Then the violent hostility of an ultra English party (resembling the Orange party in Ireland) to every thing connected with an Administration professing your political principles, tends greatly to assist the Papineau set in their

¹ Louis Joseph Papineau, the son of a French Canadian lawyer and politician, was born in 1786. In 1815 he became Speaker of the Lower Canadian Assembly, and he held the position, with one short interval, until the rebellion. His oratorical powers soon gave him an unrivalled influence in Lower Canada. On the death of George III he pronounced a notable eulogy of British rule, perhaps because the conciliatory government of Sir George Prevost and Sir John Sherbrooke was still fresh in his memory; but as the years went on and the grievances of the French Canadians remained unremedied he became more and more embittered. After Lord Goderich's concessions he parted company with John Neilson and the moderate reformers, but it was not because he had any very clear conception of his aims. The reform he chiefly advocated was an elective Legislative Council, but it was probably only as a means to an end—the annexation of Canada to the United States. He professed to model himself upon O'Connell, and it seems unlikely that he really believed in violence: at any rate, upon the outbreak of the rebellion shortly after he fled to the United States, and the leadership of the French Canadians passed from his hands. When he returned to Canada in 1845 all his efforts to regain the mantle which had fallen upon Lafontaine were ineffectual. A man of high culture, pleasant manners, and liberal sympathies, he was always rather an agitator than a statesman.

object of exciting hatred and contempt for English authority. These two extremes are doing incalculable mischief, and must disgust every friend to liberal measures. The feelings of the great body of the French Canadians are decidedly loyal, and favourable to peace and order, and it now rests with the Government, by wise and judicious measures, to protect them from the designs of those who are now working upon their credulity by the most gross misrepresentations and contrivances. . . .

12

HOUSE OF COMMONS COMMITTEE ON TRANSPORTATION: EVIDENCE OF MACARTHUR (February 5, 1838)
[EXTRACT]¹

(P. P., 1837-8, xxii.)

131. *Chairman.*²] Are you not desirous of having the respectable and educated go out?—Certainly.

132. Is it not especially desirable, in a colony like New South Wales, where the great object is to raise the moral standard?—Yes.

133. Would not those people feel it a grievance to go to a country where there is not a free constitution?—I have little doubt that emigrants of the educated classes and of character would, in general, prefer emigrating to a colony where there was a representative government to emigrating to one where there was not.

134. Do not you think that great disadvantages result from the circumstance of their not having a free constitution?—I am quite of opinion that great benefit would be derived from the introduction of a representative government, suitable to the wants and the condition of the inhabitants of the colony. Under the peculiar circumstances of that colony, I doubt whether, what I understand by the term 'free constitution,' that is, a house of assembly, would be advisable at the present moment.

135. When you say advisable at the present moment, do you contemplate the continuance of transportation, or the discontinuance?—I am looking at the colony in its present state and condition, and whether transportation is continued or discontinued will not alter that position entirely; no doubt it will affect it much; it will be a question of time; if transportation is discontinued altogether, the colony will be the sooner prepared for the enjoyment of a free constitution; but looking at the society, such as it is at present, I

¹ James Macarthur was the third son of John Macarthur of Camden, the father of the wool industry of Australia, and was the leader of the 'exclusionist' party in New South Wales. While in England in 1837-8 he published a book, *New South Wales: its Present State and Future Prospects*, which attracted a good deal of attention and in which he dealt with the question of the constitution, opposing the claim of Wentworth and others for immediate representative government.

² Sir William Molesworth.

think it would be dangerous for them at once to step into the full exercise of those powers which would be vested in a house of assembly.

136. Suppose you were fully convinced that transportation would continue for many years, do you think it would be in any way advisable to give the colony a free constitution?—Yes; I think that whenever a new Act is passed for the government of New South Wales, it will be advisable and expedient to introduce a representative system, which shall be preparatory to the future exercise of a representative government in the fullest extent in which it is exercised in any colony.

137. You are now speaking under the supposition of the continuance of transportation?—Yes.

138. But you would propose a very different constitution if you thought that transportation was to be abolished, would you not?—I do not know that I should; my opinion is, that whether transportation is continued or discontinued, you must look to the present state of the colony in any constitution that you adopt at the present moment.

139. Mr. *Charles Buller*.] You mean that, looking at the state of society caused by the existence of transportation for so many years, you think that certain modifications of the usual forms of representative government ought to be adopted in any plan brought into execution in that colony?—Yes; that is precisely what I mean to say.

140. You think that the state of society in that colony has been rendered so peculiar by the infusion of a large proportion of liberated convicts for many years, that, under whatever circumstances, with regard to the continuance or discontinuance of transportation, the change is made in the present constitution of the colony, allowance must be made for those social peculiarities, and the new constitution framed accordingly?—Yes.

141. And the fact is, that the actual continuance of transportation would not interfere with the form of government, because the convicts themselves not being electors, you do not mind for those purposes how many of them there are, and all you look to is the class that have been convicts and have become free?—Yes; the moral and social condition of the free inhabitants is the important consideration in deciding upon the form of government.

142. *Chairman*.] What is your objection to giving to the community of New South Wales as free a constitution as has been given to the Canadas, for instance, by the Act of 1791?—Because a large number of the free inhabitants of New South Wales are persons who were formerly in the condition of convicts, and have become free; and I do not think it would be safe to entrust persons who are not reformed in character, although released from legal disabilities, with the powers necessary for the exercise of such a constitution.

143. Suppose that the number of those persons were to be proportionately diminished, either by free emigration or the ceasing

of transportation, you would have no objection to granting to New South Wales as free a constitution as the Canadas, would you?—I suppose that 10 years hence, or perhaps within even a shorter period, New South Wales might be just as well qualified for representative government as any other of our colonies.

13

CANADA CLERGY RESERVES ACT 1840 (EXTRACTS)¹

(3 & 4 *Vict. cap.* LXXVIII.)

Whereas it is expedient to provide for the final Disposition of the Lands called Clergy Reserves in Canada, and for the Appropriation of the yearly Income arising or to arise therefrom, for the Maintenance of Religion and the Advancement of Christian Knowledge within the said Province; be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That after the passing of this Act it shall be lawful for the Governor of the Province of Canada, by and with the Advice of his Executive Council, and under such Regulations as may be by him from Time to Time in Council established in that Behalf, and approved by the Queen in Council, to sell, grant, alienate, and convey in Fee Simple all or any of the said Clergy Reserves: Provided nevertheless, that the Quantity of the said Clergy Reserves so to be sold as aforesaid in any One Year shall not in the whole exceed One hundred thousand Acres, without the previous Approbation in Writing of One of Her Majesty's Principal Secretaries of State.

II. And be it enacted, That the Proceeds of all past Sales of such Reserves which have been or shall be invested under the Authority of an Act passed in the Eighth Year of the Reign of King George the Fourth, intituled *An Act to authorize the Sale of Part of the Clergy Reserves in the Provinces of Upper and Lower Canada*,² shall be subject

¹ This Act was the greatest concession that the authorities of the Church of England were then ready to make to the wishes of the Upper Canadians. Both Durham and Sydenham perceived the importance of settling this vexed question; and Sydenham, at the cost of infinite trouble, passed through both Houses of the Upper Canada Assembly a Bill providing that the reserves should be sold and the proceeds funded, and the annual return shared in specified proportions by the Church of England, Church of Scotland, and other recognized religious bodies. He urged—and Lord John Russell agreed—that this settlement should be accepted; but Phillpotts, Bishop of Exeter, discovered that the Act was beyond the powers of the Assembly to pass, and it was thought impossible that a confirmatory Act should pass through the House of Lords in face of the opposition both of Peel and of the bishops. Accordingly, when the Ministry was privately informed that the Church was, for the first time, ready to abate a part at least of its claims, the terms it offered were accepted and this Act passed. But, as Howick predicted at the time, they had only scotched the snake, not killed it. See below, Nos. 46 and 47.

² The Act 7 & 8 Geo. IV, cap. 162, due to the influence of Strachan, Bishop of

to such Orders as the Governor in Council shall make for investing, either in some Public Funds in the Province of Canada, secured on the Consolidated Fund of the said Province, or in the Public Funds of Great Britain and Ireland, the Amount now funded in England, together with the Proceeds hereafter to be received from the Sales of all or any of the said Reserves, or any Part thereof. . . .

III. And be it enacted, That the Interest and Dividends accruing upon such Investments of the Proceeds of all Clergy Reserves sold or to be sold, and also the Interest to accrue upon Sales on Credit of Clergy Reserves, and all Rents arising from Clergy Reserves that have been or may be demised for any Term of Years, shall be paid to the Receiver General of the Province of Canada, or such other Person as shall be appointed to receive the Public Revenues of the said Province, and shall together form an annual Fund for the Purposes herein-after mentioned, and shall be paid by him from Time to Time in discharge of any Warrant or Warrants which shall from Time to Time be issued by the Governor, in pursuance of the Provisions of this Act; (that is to say,) in the first place, to satisfy all such annual Stipends and Allowances as have been heretofore assigned and given to the Clergy of the Churches of England and Scotland, or to any other Religious Bodies or Denominations of Christians in Canada, and to which the Faith of the Crown is pledged, during the natural Lives or Incumbencies of the Parties now receiving the same: Provided always, that until the annual Fund so to be created and deposited with the Receiver General shall suffice to meet the above-mentioned Stipends and Allowances, the same, or so much thereof as the said Fund may be insufficient to meet, shall be defrayed out of the Casual and Territorial Revenue of the Crown in the Province of Canada.

IV. And be it enacted, That as soon as the said Fund shall exceed the Amount of the several Stipends and Allowances aforesaid, and subject always to the prior Satisfaction and Payment of the same, the said annual Fund shall be appropriated as follows; (that is to say,) the net Interest and Dividends accruing upon the Investment of the Proceeds of all Sales of such Reserves sold or to be sold under the Authority of the before-recited Act of the Eighth Year of the Reign of King George the Fourth¹ shall be divided into Three equal Parts, of which Two shall be appropriated to the Church of England and One to the Church of Scotland in Canada; and the net Interest and Dividends accruing upon the Investments of the Proceeds of all Sales of such Reserves sold under the Authority of this Act shall be divided

Toronto and leader of the Church of England in Canada, empowered the governor, with the consent of the executive council, to sell one-fourth of the reserves at the rate of 100,000 acres a year. The proceeds were to be vested in the public funds of Great Britain and used for the benefit of the Church.

¹ This distinction between sales under the former Act and under this Act was not made in the Canadian Bill.

into Six equal Parts, of which Two shall be appropriated to the Church of England and One to the Church of Scotland in Canada: Provided always, that the Amount of the before-mentioned Stipends and Allowances which shall be paid to and received by any Clergyman of either of the said Churches of England or Scotland shall be taken, as far as the same will go, as a Part of the Share accruing to each Church respectively by virtue of this Act. . . .

V. And be it enacted, That the Share allotted and appropriated to each of the said Churches shall be expended for the Support and Maintenance of Public Worship, and the Propagation of Religious Knowledge, the Share of the said Church of England being so expended under the Authority of the 'Society for the Propagation of the Gospel in Foreign Parts', and the Share of the said Church of Scotland under the Authority of a Board of Nine Commissioners, to be elected by the Synod or Synods of the Presbyterian Church of Canada in connexion with the Church of Scotland, under such Regulations as shall be from Time to Time established by the Governor of Canada, with the Advice of his Executive Council.

VII. And be it enacted, That, subject to the foregoing Provisions, the Residue of the said annual Fund shall be applied by the Governor of Canada, with the Advice of the Executive Council, for Purposes of Public Worship and Religious Instruction in Canada.

VIII. [Guarantee of the Sums of £7,700 to the Church of England, and £1,580 to the Church of Scotland out of the Consolidated Fund of the United Kingdom.]

IX. [Accounts of Expenditure to be rendered annually to Governor in Council and laid before Legislature.] . . .

14

LETTER FROM POULETT THOMSON TO A FRIEND

(December 12, 1839) [EXTRACT]

(*Poulett Scrope, Life of Lord Sydenham.*)

I am not a bit afraid of the responsible government cry. I have already done much to put it down in its inadmissible sense; namely, the demand that the council shall be responsible to the assembly, and that the governor shall take their advice, and be bound by it. In fact, this demand has been made much more *for* the people than *by* them. And I have not met with any one who has not at once admitted the absurdity of claiming to put the council over the head of the governor. It is but fair, too, to say that every thing has in past times been done by the different governors to excite the feelings of the people on this question. First, the executive council has generally been composed of the persons most obnoxious to the majority of the assembly. And next, the governor has taken extreme care to make every act

of his own go forth to the public *on the responsibility* of the executive council. So the people have been carefully taught to believe that the governor is nobody, and the executive council the real power, and that by the governor himself. At the same time they have seen that power placed in the hands of their opponents. Under such a system it is not to be wondered at if our argument founded on the responsibility of the governor to the home government falls to the ground. I have told the people plainly that, as I cannot get rid of my responsibility to the home government, I will place no responsibility on the council; that they are *a council* for the governor to consult, but no more. And I have yet met with no 'responsible government' man who was not satisfied with the doctrine. In fact, there is no other theory which has common sense. Either the governor is the sovereign or the minister. If the first, he may have ministers, but he cannot be responsible to the government at home, and all colonial government becomes impossible. He must therefore be the minister, in which case he cannot be under the control of men in the colony.

15

DESPATCH FROM STANLEY TO BAGOT [EXTRACTS]¹
(C.O. 43/36: P. R. O.)

Downing Street,
8th October 1841.

SIR,

I am well assured that it must be unnecessary for me to impress upon you the magnitude and importance of the interests which Her Majesty has been pleased to entrust to your charge, in appointing you to the high office of Governor General of British N. America.

The duties of administering a Government so extensive, at all times sufficiently arduous, are peculiarly so at the present juncture, when, in addition to difficulties arising out of the state of the Frontier, and the unsettled condition of our Relations with the U. States of America, a great change has recently been wrought, and a great experiment is actually in progress, affecting the constitution and internal arrangements of the great Province over which you are called upon more immediately to preside. Upon your firmness, judgment, moderation, and temper will depend, in a great measure, the success

¹ Sir Charles Bagot was a Tory of the school of Canning, and had been at various times Ambassador at St. Petersburg, at the Hague, and at Washington. It was the success with which he had held this last appointment, and the popularity he had gained in the United States, that led to his appointment to Canada: if his experience had been entirely diplomatic, the most important of all Canadian questions at the moment was, in the opinion of Peel, that of relations with the United States. The situation on the Maine-New Brunswick frontier, alluded to later in the despatch, was delicate in the extreme until the negotiation of the Ashburton Treaty in 1842. Bagot's career in Canada, however—short though it was—proved that he possessed not only conciliatory manners but also sound judgment and high courage.

of that experiment, of which the failure could not but lead to consequences the most disastrous, while its favorable and harmonious working may be expected to have the effect of rapidly developing the vast resources of B.N. America,—of strengthening the feelings of Loyalty to the Crown, and attachment to British Connection, which, I am persuaded, actuate the vast majority of the People of Canada,—and of keeping, for many years to come, a free, a happy, and an improving People in close connection with and cheerful dependence upon the British Empire. In discharging your important duties, The Queen commands me to assure you that Her Majesty will, on all occasions, be prepared to place the most favorable construction upon the course which, in the exercise of your judgment, you may feel called upon to pursue; and while I invite, upon your part, the most unreserved communication of your views and opinions upon every question which may arise, I assure you that you may rely upon the most cordial support, which it may be in my power to give, consistent with my public duty, to your measures and to your authority.

I need not point out to you that, in assuming the Govt. of Canada, you are placed in circumstances very different from any of your Predecessors. You are about to administer the affairs of a Province, legislatively united after a separation of Fifty years, during which it was impossible but that separate interests, arising out of local situation, different origin and other causes to which I will not advert, must necessarily have sprung up and engendered rivalries and jealousies, which have been, most unhappily, aggravated by events of late years, and which it will be your first and chief duty, by every means in your power, to allay and to extinguish.

You cannot too early, and too distinctly, give it to be understood, that you enter the Province with the determination to know no distinctions of national origin, or Religious Creed;—to consult, in your legislative capacity, the happiness, and (so far as may be consistent with your duty to your Sovereign, and your responsibility to Her Constitutional Advisers) the wishes of the Mass of the Community,—and, in your Executive capacity, to administer the Laws firmly, moderately and impartially. You will invite to aid you, in your labors for the welfare of the Province, all Classes of the Inhabitants; you will consider it your bounden duty to be accessible to the representations, and prepared to listen to the complaints, or the statements of the views of all; and the only Passports to your favor will be, Loyalty to The Queen, attachment to British Connection, and an efficient and faithful discharge of Public duty.

You will give every encouragement in your power to the extension, within the Province, of Religious Education, and of Secular Instruction: and you will not fail to bear in mind, that the habits and opinions of the People of Canada are, in the main, averse from the

absolute predominance of any single Church; and that while the Churches of England and of Scotland are by Law established and endowed, and must be steadily upheld and anxiously cherished,—the Church of Rome also, to which a large portion of the Population belongs, is recognised by the Law, and secured in the enjoyment of Rights, which you will be bound to protect; and that the co-operation of Wesleyan Methodists and Protestant Dissenters, is not to be refused or discouraged by the Executive.

In Civil matters, it must be your policy to seek to withdraw the Legislature, and the Population generally, from the discussion of abstract and theoretical questions, by which the Government of Canada in former times has been too often and too seriously embarrassed, to the calm and dispassionate consideration of practical measures for the improvement and advancement of the internal prosperity of the Province. In maturing measures of this description, you will endeavor to avail yourself of the advice and services of the ablest Men, without reference to distinctions of local party, which, upon every occasion, you will do your utmost to discourage; and, in framing them for the consideration of the Provincial Legislature, you will endeavour to present them in the form in which they are most likely to be favorably received by the House of Assembly.

I do not, of course, intend to institute a precise analogy between the functions of that House, and those of the House of Commons; but I should strongly impress upon you my opinion, that, on matters purely domestic, or where you are not bound, either by absolute Instructions, or by a sense of the paramount duty which you owe to Imperial Interests, it would be matter of great regret that measures should be repeatedly, and deliberately affirmed by large Majorities of the Assembly, and subsequently rejected by the Legislative Council. Your efforts will, on all occasions, be directed to promoting and maintaining harmonious action between the two Branches of the Legislature. Questions may undoubtedly arise, on which you may feel it absolutely inconsistent with your duty, to sanction measures approved by one, or even by both Houses: but I would hope that they may be of very rare occurrence, and that when they arise, you may be enabled, temperately and firmly, to reconcile the performance of your duty, upon your responsibility to the Crown, with that respect which, I am sure, you will be on all occasions desirous of shewing to the expressed wishes of the Representatives of the People. . . .

Her Majesty commands me to assure you, that the Loyal Inhabitants of Canada may confidently rely upon the fullest protection, which the British Power can afford, against Foreign aggression from whatever quarter. Her Majesty looks upon Canada as an integral portion of the British Empire, the defence of which touches the Honor of Her Crown, and the prosperity of the Empire at large; and no wish

is nearer to H.M. heart than that, under Her Rule, Her faithful Subjects in Canada, of all denominations, may rest in peace under British protection,—may feel themselves to be one people with their fellow subjects in the British Islands, and may increase in wealth, prosperity, and contentment in the national enjoyment of a free and essentially British Constitution. It will be your important duty to further the attainment and maintenance of these great objects; and I look, with equal confidence, to the zeal with which you will apply yourself to the task, and to the ability with which you will execute the gracious purpose of your Sovereign.

I have, &c.,

(signed)

STANLEY.

16

DESPATCH FROM STANLEY TO NAPIER¹

(*P. P.*, 1846, xxix.)

Downing-street, 15 April 1842.

SIR,

I have received your despatch No. 141, of the 20th December 1841, enclosing the copy of a series of Resolutions adopted at a public meeting of the inhabitants of Cape Town and its vicinity, on the 24th of August, and a petition drawn up in conformity with the sixth of those Resolutions, addressed to the Queen in Council, and praying that for the reasons therein set forth, the government of the colony may, as speedily as possible, be assimilated in principle and form to that of Great Britain; and that it may be composed of a Governor appointed by the Crown, an Executive Council, also appointed by the Crown, and a Legislative Assembly, composed of representatives freely elected by the people.

I have not thought it my duty to advise the Queen to refer to the Privy Council the petition addressed to Her Majesty in Council, as I am aware of no reason why any such departure should be made, in the present case, from the established system on which the executive Government of this kingdom and of the British colonies is administered.

The prayer of the petition is supported by your own high authority. You decline indeed the task of entering into details on the subject; but in favour of your recommendation, you refer to a series of general

¹ Sir George Thomas Napier, a brother of Sir C. J. Napier and of the historian of the Peninsular War, had himself fought gallantly in the Peninsula and lost an arm at Ciudad Rodrigo. He was sent out to the Cape in 1837 on the recall of Sir Benjamin D'Urban, and remained there as Governor until 1843. He made a genuine effort to deal justly and liberally with colonists and natives alike, and he had the rare satisfaction of returning from Cape Town to London without having fought a Kaffir war. Whilst a competent Governor, however, he showed little sign of the distinction of his brothers Charles and William.

principles which appear to you to justify, if not to require the proposed measure. These are, that it is the tendency of such changes gradually to accommodate themselves to the wants of society,—that it is highly important to assign to the people collectively a share in the management of their own local affairs,—that it is to the want of this participation, and to the ignorance thence resulting, that popular discontent is chiefly to be ascribed,—that great benefits are to be anticipated from the free and open discussion of public interests,—that there is no other method of dispelling the apathy and self-distrust which induce the mass of society to lean on the Government for aid and guidance in many cases where they would much more effectually assist themselves by the use of their own resources,—that such institutions afford a species of political education, and train both the electors and the elected to a more just and comprehensive view of public interests,—that experience in the case of the municipal corporation of Cape Town¹ has already demonstrated the justice of those views,—and that from all these considerations combined, the conclusion may be drawn that the prayer of the petition ought to be granted.

On abstract questions of government of this nature, there is little risk of any material difference of opinion between us. I am willing to subscribe generally to the principles which you have thus stated, without pausing to qualify my assent to them by any of the considerations to which, in a merely theoretical inquiry, it might be convenient or necessary to refer. But in truth the difficulty of deciding practical questions of this kind seldom consists in ascertaining the abstract soundness of even general principles. It is really to be found in the varying circumstances by which the practical application of such principles to the exigencies of society, must be controlled and modified through the instrumentality of those very details into which you decline to enter. Much as I should be gratified by calling the colonists of the Cape of Good Hope to participate fully in the management of their own local affairs, I am compelled to pause and estimate the obstacles, both physical and moral, which, apparently at least, would forbid me to entertain the hope of accomplishing that end at present, or within any period which could, at present, be clearly defined.

The plan suggested in the petition, and recommended in your despatch, is described as an assimilation in principle and in form to the Government of Great Britain. I cannot admit the accuracy of that statement. A Legislature composed exclusively of persons elected by the people at large, is utterly unknown to the constitution of this kingdom, and does not exist in any one of the colonial dependencies of the British Crown. It may be said, indeed, that the petition, although submitting a definite scheme, is intended only to call for an extension of the principle of self-government. It may be

¹ On the municipal corporation of Cape Town see also below (No. 32).

so; yet I cannot but observe that this is, in point of fact, to evade the real difficulties of the case; and the very fact of such a scheme being propounded as one analogous to the British constitution, affords convincing proof that the authors of it had contented themselves with a very superficial consideration of the subject, and could not have applied their minds to it in such a manner as to have mastered or even ascertained the difficulties by which it is beset. I will endeavour to call your attention to some of them.

In all the more extensive British colonies in which representative assemblies exist, a problem has arisen of which it has never been possible to find a complete solution. The capital town of the province must be the seat of the local Legislature. But it is the place of residence of a comparatively small proportion of the colonists. The settlers resident in the remote country districts have many interests opposed to those of the citizens of the metropolis. But the representative body is composed of the inhabitants of the capital town in a proportion far exceeding that of their relative wealth and numbers, because to them alone, attendance in the legislature is a matter of convenience or desire. To the rural settler it is a heavy and often an unwelcome burthen. To secure to the country districts their due share of attention in the Assembly, and their due proportion in the benefit of the expenditure of the public money, it has therefore become a necessary maxim in such colonies, that a small number of people residing on a large area should enjoy an equal share in the representation with a much larger number of people residing on a comparatively contracted space, or (to adopt the common form of expression in use in British North America) that there must be a combined ratio of territory and of population.

This necessity can exist in no colony more evidently than at the Cape of Good Hope. Cape Town is barely accessible from the eastern or northern districts, except by persons prepared to incur an amount of fatigue and expense to which it would be unreasonable to expect that men would habitually subject themselves from a spontaneous zeal for the public service. But the toil and cost of the journey would be slight inconveniences when compared with those to which a settler in these parts of the country must be subjected by a temporary residence for some weeks at Cape Town. He must not only be prepared to incur a large outlay of money, but must abandon commercial, professional or agricultural pursuits, at a time when his presence might be indispensable, not merely to the interests of his family, but even to their protection against the incursions of the predatory tribes which infest the frontier districts. There would of course be exceptions, but as a general rule it would be irrational to expect the actual attendance at a House of Assembly at Cape Town of many members, excepting those whose settled residence was in that town, or in the immediate vicinity. They would of necessity

be chosen in a large majority of cases to represent the country districts, and the Assembly would in reality express the opinions and consult for the interests rather of the capital than of the colony at large; yet they would be entitled and enabled to claim for their opinions all the authority belonging to a body freely chosen to act for the whole population. I cannot but observe, that it is from Cape Town and the immediate vicinity alone, that a demand for changes of this kind is now made or has ever proceeded.

The impervious nature of the country would present great obstacles of another kind to the execution of this project. Electoral districts must be formed of great extent, and the voter resorting to the polling place of the district must be prepared, in a large proportion of cases, to encounter such an amount of hardships and expense, as to render the franchise a most unenviable distinction. In fact, scarcely any would be found willing to exercise it on such terms, and the representation must become merely nominal and fictitious to an extent unknown in any other British colony.

During the actual session of the proposed Assembly, the same physical causes must create serious hindrances of another kind to the successful discharge of their duties. To a very large proportion of the constituency, all communication with their representatives, and all knowledge of their proceedings and deliberations, must arrive so tardily and so imperfectly, as to destroy one of the great advantages of such institutions in other countries. The Assembly would scarcely be able to fulfil its office as the grand inquest of the colony, without subjecting all persons whom they might wish to examine to intolerable privations, and therefore in this respect also the ends of its creation would be very imperfectly attained.

I willingly admit, however, that from such considerations as these the only inference is, that the proposed popular Legislature would be a less useful body than the General Assemblies of other colonies. But I attach much more weight to the moral difficulties which remain to be noticed, than to those physical obstacles to which I have adverted.

The interests, or the supposed interests of the metropolitan population, may be often at variance with those of the remote country districts; but there is another, and a much more formidable distinction, if not of interests properly understood, at least, of prejudices, of feelings and of habits; I mean the distinction which results from diversity of race and origin. The law, no doubt, especially since the abolition of slavery, places all the Queen's subjects, in all the possessions of the Crown, on a footing of perfect civil equality; yet in many of them it has been found to be a task of almost insuperable difficulty, to reconcile the principles of free institutions with this legal equality between different races. Now it cannot be denied, that at the Cape of Good Hope, more than in almost any other possession of the British Crown, the elements of which society is composed, are heterogeneous,

dissimilar and separated from each other by distinctions almost indelible.

I have no means of stating with entire precision, the relative numbers or the comparative wealth of the different classes which combine to form the collective population of the colony. But I apprehend that the colonists of the English race are at once the least numerous, and the most wealthy, active and intelligent class. To these succeed the old Dutch settlers or their descendants, between whom and the English there probably subsist many mutual jealousies, and but few domestic or even commercial connexions. The free Aborigines of the colony form a third body, who are manifestly much depressed in the general scale of society. To them are to be added a large number of Fingoes,¹ and of other tribes, whom the events of the late Caffre war have added to the permanent inhabitants of the eastern districts. Finally, there is a body of many thousand emancipated Negroes.² Now if an assembly of the people of the Cape of Good Hope should be convened by Her Majesty, by what method is it proposed to secure for each of these component elements of society its due weight and influence in that body, and no more? When I bear in mind how powerful, indeed how nearly irresistible, is the authority of an elected Legislature in the colony which it represents, I cannot regard as a matter of secondary concern the adjustment and balance of that authority in such a manner as may prevent its being perverted into a means of gratifying the antipathies of a dominant caste, or of promoting their own interests or prejudices, at the expense of those of other and less powerful classes. Will the wealthy, and intelligent, and enterprising minority to which I have adverted, be content to find themselves overborne by a majority inferior to themselves in all respects, except in that of numerical strength? Or, if their greater zeal and activity, and their greater proximity to the seat of government should have the effect of giving to an English minority a preponderance in the Legislature over the numerical majority of the population, will there not be serious risk of extensive popular discontent? Will not questions continually arise, between them and the other classes in the colony, of rival interests and conflicting prejudices, the solution of which in a sense favourable to the English minority, will constantly aggravate the jealousies and embitter the alienation arising out of difference of race?

¹ The 'Fingoes' were the scattered remnants of several native tribes, said to have lived in Natal before its devastation by the Zulu warrior Chaka. They lived for some time in bondage with the Galekas on the other side of the Kei, but took advantage of the Kaffir War of 1834-5 and of the friendly attitude of Sir B. D'Urban to take refuge in British territory. Attempts were made to settle them in locations near the frontier, but for some years with little success, and the mutual hostility between them and the Kaffirs further complicated the difficult frontier problem.

² The 'negro slaves' were not enslaved Kaffirs or Hottentots. They, like the slaves in the West Indies and North America, had (in most cases) been brought from West Africa, and were most numerous in the Western Districts of the Colony.

I am unwilling to follow out this consideration into all the consequences to which it obviously points. But they are such as call for your most mature reflection. It is no light thing to throw down the barriers which have hitherto afforded protection to the great mass of the colonists, and to hazard the consequences of placing them without that protection in the presence of an authority, the abuse of which might work out a great amount of irremediable injustice.

Among the details of any project for establishing a representative Assembly, there are some which involve principles of the highest and most critical nature. For example, what is the proposed qualification for the exercise of the franchise by the electors and by the elected? This question touches many points which it is at once necessary and most difficult to handle. Soon after the abolition of slavery, and in the first excitement and desire for further change consequent on that great innovation, demands for representative Assemblies were preferred by the inhabitants of some other colonies to which that Act applied. But when the petitioners were desired to apply their minds to the question of qualification, they withdrew that demand, and have not since revived it. It is, in fact, replete with difficulty. A high proprietary qualification is a virtual exclusion not merely of the poor as such, but of almost the whole body of African birth and descent, because they happen to constitute the poorer class. A low proprietary qualification embracing a considerable number of that class would, on the other hand, be the gift to persons of African race and descent, of an authority which those who derive their birth or descent from Europe, would regard with the utmost apprehension. I do not mean to say that a compromise of these difficulties is impracticable, but merely that, until the nature of that compromise is ascertained and has been well considered, I must regard the project as too unripe to be sanctioned by Her Majesty's Government.

There are other essential details regarding the division of the colony into electoral districts, the registration of votes, and the conduct of elections, without which the proposal you have made can never assume the form of a practical measure, on which the confidential advisers of the Crown can deliberate and decide. But these are arrangements of which the general plan and outline must of necessity originate with yourself.

The recent division of the Cape of Good Hope colony into two separate, though not mutually independent governments,¹ is a circumstance suggesting many other questions of detail, when it is proposed to establish an Assembly common to both. It is difficult to conceive a single Legislature elected by the people for two countries, placed under different systems of executive or administrative government.

¹ In 1836 a Lieutenant-Governor (Andries Stockenstrom) was appointed for the Eastern Districts.

Neither, so far as I can perceive, has it yet occurred to you to inquire, by what means the necessary authority of the Executive Government is to be sustained in the presence of such a representative Legislature as you contemplate, composed as that Legislature must be, of at least two different European races. This is indeed a very large subject, on which I am unwilling to enter without necessity; but my meaning will be sufficiently illustrated by referring you to the recent history of Canada, and to the Act of Parliament passed in the year 1840, for the better government of that province.

I have entered thus at length into this subject from a deep sense of its importance, and because I have been unwilling to dismiss with a slight or cursory notice a petition bearing such signatures as those before me, and supported by your recommendation. Nor indeed do I wish to be understood as meeting that petition by any irrevocable and fixed opinion against the prayer of it. I limit myself at present to the conclusion, that the proposal is open to many difficulties to which your despatch does not refer, and that the scheme is presented in a form too incomplete to enable the confidential advisers of the Crown to advise Her Majesty as to the acceptance or rejection of it. If, after weighing the remarks which I have made, you should think it desirable to prolong this correspondence, I shall be ready to resume it, on being apprized by you in what manner you would propose to obviate the objections which I have indicated, and to meet in detail the many difficulties which will, I am sure, present themselves to your own mind in the endeavour to give practical effect to the views entertained by the petitioners, and sanctioned by your approbation of the general principles.¹

I have, &c.

(signed) STANLEY.

17

ACT FOR THE GOVERNMENT OF NEW SOUTH WALES AND VAN DIEMEN'S LAND [EXTRACTS]

(5 & 6 *Vict. cap.* LXXVI.)

Whereas it is expedient that further Provision be made for the Government of New South Wales; be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That there shall be within the Colony of New South Wales a Legislative Council, to be constituted in the Manner and for the Purposes herein-after mentioned, and that the said Legislative Council shall consist of Thirty-six Members, and that Twelve of the Members of the said

¹ These objections were answered in 1848 by Montagu, the Colonial Secretary. See below, No. 32.

Council shall from Time to Time, in the Manner herein-after mentioned, be appointed by Her Majesty, and that Twenty-four of the Members of the said Council shall from Time to Time, in the Manner herein-after mentioned, be elected by the Inhabitants of the said Colony.

II. And be it enacted, That the Legislature now by Law established within the said Colony of New South Wales shall, by Ordinances to be for that Purpose made and enacted in the Manner and subject to the Conditions now by Law required in respect of any Ordinances made and enacted by the said Legislature, make all necessary Provisions for dividing the Parts of the said Colony within the Boundaries of Location¹ into convenient Electoral Districts, and for appointing and declaring the Number of Members to be elected for each such District, and for the Compilation and Revision of Lists of all Persons qualified to vote at the Elections to be holden within such Districts, and for the appointing of Returning Officers, and for the issuing, executing, and returning of the necessary Writs for such Elections, and for taking the Poll thereat, and for determining the Validity of all disputed Returns, and otherwise for ensuring the orderly, effective, and impartial Conduct of such Elections: Provided always, that the District of Port Phillip and the Towns of Sydney and Melbourne shall be Electoral Districts; and that the District of Port Phillip shall return at least Five Members, the Town of Sydney shall return Two Members, and the Town of Melbourne shall return One Member.

IV. And be it enacted, That it shall be lawful for the Governor and the said Legislative Council of the Colony of New South Wales, by any Act or Acts to be hereafter passed, to alter the Divisions and Extent of the several Districts and Towns which shall be represented in the Legislative Council, and to establish new and other Divisions of the same, and to alter the Number of Members of the Council to be chosen by the said Districts and Towns respectively, and to increase the whole Number of the Legislative Council . . . : Provided always, that such Number of the additional Councillors as is equal to One Third Part of the whole Increase, or if such Increase shall not be exactly divisible by Three, such whole Number as is next greater than One Third of the whole Increase, shall be appointed by Her Majesty, and the remaining additional Members of the Council shall be elected by the Inhabitants of the Colony in like Manner as the Elective Members first constituted under this Act.

V. And be it enacted, That the Elective Members shall be chosen

¹ In New South Wales settlement was for long limited within 'boundaries of location' prescribed by the Government. Under Governor Darling about 1830 these limits were extended to the 'nineteen counties'—an area forming, very roughly, a semicircle with Sydney as its centre and a radius of about 100 miles. Even after Bourke's introduction of the squatting licence system the sale of land was allowed only within these limits in New South Wales proper, though soon afterwards fresh counties were surveyed in the Port Phillip district.

by the Votes of the Electors, each of whom shall be either in his own Right seised of or entitled to an Estate of Freehold in possession in Lands or Tenements situate within the District for which such Vote is to be given, of the clear Value of Two hundred Pounds Sterling Money at the least, above all Charges and Incumbrances in any way affecting the same, or a Householder within such District occupying a Dwelling House of the clear annual Value of Twenty Pounds Sterling Money at the least.

VI. And be it enacted, That no Person shall be entitled to vote at any such Election as aforesaid unless he be of the full Age of Twenty-one years, and a natural-born Subject of the Queen, or shall have been naturalized, or shall hold Letters of Denization, according to Law; and that no Person shall be entitled to vote at any such Election who shall have been attainted or convicted of any Treason, Felony, or infamous Offence within any Part of Her Majesty's Dominions, unless he shall have received a free Pardon, or one conditional on not leaving the Colony, for such Offence, or shall have undergone the Sentence or Punishment to which he shall have been adjudged for such Offence.¹

VIII. And be it enacted, That no Person shall be capable of being elected a Member of the Legislative Council who shall not be of the full Age of Twenty-one Years, and a natural-born Subject of the Queen, or naturalized by Law, or who shall not be legally or equitably seised of an Estate of Freehold, for his own Use and Benefit, in Lands and Tenements in New South Wales of the yearly Value of One Hundred Pounds Sterling Money, or of the Value of Two Thousand Pounds Sterling Money, above all Charges and Incumbrances affecting the same.

XIV. And be it enacted, That every Non-elective Member of the Legislative Council of the Colony of New South Wales shall hold his Seat therein for Five Years from the Day of his Appointment, or until the Council shall be sooner dissolved, subject nevertheless to the Provisions herein-after contained for vacating the same.

XXI. And be it enacted, That there shall be a Session of the said Council once at least in every Year, . . . and that every Council shall continue for Five Years from the Day of the Return of the Writs for choosing the same, and no longer, subject nevertheless to be sooner prorogued or dissolved by the Governor of the said Colony.

XXIII. And be it enacted, That the said Legislative Council shall at its First Meeting, and before proceeding to the Despatch of any other Business, elect some one Member of such Council to be the Speaker thereof, . . . and the Speaker so elected shall preside at all Meetings of the said Council: Provided nevertheless, that it shall be

¹ This section was in the usual terms: the point to note is that it allowed a vote to persons who had come out as convicts and become free by servitude. The question whether or not emancipists should have the franchise had been the most controversial of all in the colonial constitutional discussions.

lawful for the Governor for the Time being of the said Colony to disallow the Choice of any such Speaker. . . .

XXIX. And be it enacted, That the Governor of the said Colony of New South Wales, with the Advice and Consent of the said Legislative Council, shall have Authority to make Laws for the Peace, Welfare, and good Government of the said Colony: Provided always, that no such Law shall be repugnant to the Law of England,¹ or interfere in any Manner with the Sale or other Appropriation of the Lands belonging to the Crown within the said Colony, or with the Revenue thence arising.

XXX. And be it enacted, That it shall be lawful for the Governor of the said Colony of New South Wales to transmit to the said Council for its Consideration the Drafts of any such Laws which it may appear to such Governor desirable to introduce, and any Amendments which he shall desire to be made in any Bill presented to him for Her Majesty's Assent, and such proposed Laws shall thereupon be considered by the Council in like Manner as if the same were Bills which had originated therein; and it shall be lawful for the Council to return any Bill in which the Governor shall have so made any Amendments, with a Message signifying to which of the Amendments the Council agree, and those to which they disagree, and thereupon the Bill shall be taken to be presented for Her Majesty's Assent, with the Amendments so agreed to.

XXXI. And be it enacted, That every Bill which has been passed by the said Council, and also every Law proposed by the Governor which shall have been passed by the said Council, whether with or without Amendments, shall be presented for Her Majesty's Assent to the Governor of the said Colony, and that the Governor shall declare according to his Discretion, but subject nevertheless to the Provisions contained in this Act, and to such Instructions as may from Time to Time be given in that Behalf by Her Majesty, Her Heirs or Successors, that he assents to such Bill in Her Majesty's Name, or that he withholds Her Majesty's Assent, or that he reserves such Bill for the signification of Her Majesty's Pleasure thereon; and all Bills altering or affecting the Divisions and Extent of the several Districts and Towns which shall be represented in the Legislative Council, or establishing new and other Divisions of the same, or altering the Number of the Members of the Council to be chosen by the said Districts and Towns respectively, or increasing the Whole Number of the Legislative Council, or altering the Salaries of

¹ The phrase 'repugnant to the law of England', though repeated in all the colonial constitutions of the day, had no very definite meaning. In the sixties, however, the vagaries of a South Australian judge made an authoritative interpretation necessary, and one was given by the Colonial Laws Validity Act 1865, which declared that colonial laws should be void only when repugnant to an Act of Parliament applying to the colony by express words or necessary intendment. Up to that time in the opinion of the Crown Law Officers a Colonial Act repugnant to fundamental principles of English law was undoubtedly invalid.

the Governor, Superintendent, or Judges, or any of them, and also all Bills altering or affecting the Duties of Customs upon any Goods, Wares, or Merchandize imported to or exported from the said Colony, shall in every Case be so reserved, except such Bills for temporary Laws as the Governor shall expressly declare necessary to be forthwith assented to by reason of some public and pressing emergency.

XXXII. And be it enacted, That whenever any Bill which shall have been presented for Her Majesty's Assent to the Governor of the said Colony shall by such Governor have been assented to in Her Majesty's Name, the Governor shall by the first convenient opportunity transmit to One of Her Majesty's Principal Secretaries of State an authentic Copy of such Bill so assented to; and that it shall be lawful, at any Time within Two Years after such Bill shall have been so received by the Secretary of State, for Her Majesty, by Order in Council, to declare Her Disallowance of such Bill; and that such Disallowance, together with a Certificate under the Hand and Seal of the Secretary of State certifying the Day on which such Bill was received as aforesaid, being signified by the Governor to the Legislative Council of the said Colony, by Speech or Message to the said Council, or by Proclamation in the New South Wales Government Gazette, shall make void and annul the same from and after the Day of such Signification.

XXXIII. And be it enacted, That no Bill which shall be so reserved for the Signification of Her Majesty's Pleasure thereon shall have any Force or Authority within the Colony of New South Wales until the Governor of the said Colony shall signify, either by Speech or Message to the Legislative Council of the said Colony, or by Proclamation, as aforesaid, that such Bill has been laid before Her Majesty in Council, and that Her Majesty has been pleased to assent to the same; . . . and that no Bill which shall be so reserved as aforesaid shall have any Force or Authority in the said Colony unless Her Majesty's Assent thereto shall have been so signified as aforesaid within the Space of Two Years from the Day on which such Bill shall have been presented for Her Majesty's Assent to the Governor as aforesaid.

XXXIV. And be it enacted, That with the Deductions and subject to the Provisions herein-after contained, the whole of Her Majesty's Revenue within the said Colony, arising from Taxes, Duties, Rates, and Imposts levied on Her Majesty's Subjects within the said Colony, shall be appropriated to the public Service within the said Colony, by Ordinances to be for that Purpose enacted by the Governor, with the Advice and Consent of the Legislative Council of the said Colony and in no other Manner: Provided always, that it shall not be lawful for the said Council to pass, or for the said Governor to assent to, any Bill appropriating to the public Service any Sums or Sum of Money arising from the Sources aforesaid, unless the Gover-

nor, on Her Majesty's Behalf, shall first have recommended to the Council to make Provision for the specific public Service towards which such Money is to be appropriated.¹

XXXVII. And be it enacted, That out of the said Revenue Fund there shall be payable every Year to Her Majesty, Her Heirs and Successors, the Sum of Thirty-three thousand Pounds, for defraying the Expences of the several Services and Purposes in the Schedule marked (A.) annexed to this Act, and a further Sum of Eighteen thousand six hundred Pounds for the defraying the Expences of the several Services and Purposes named in the Schedule marked (B.) annexed to this Act, and a further Sum of Thirty thousand Pounds for defraying the Expences of the several Services and Purposes named in the Schedule marked (C.) annexed to this Act. . . .

XXXVIII. And be it enacted, That, until altered by any Bill passed by the said Legislative Council, and assented to by Her Majesty, the Salaries of the Governor, Superintendent, and Judges shall be those respectively set against their several Offices in the Schedule marked (A.); but that it shall be lawful for the Governor to vary the Sums appropriated to any of the Services or Purposes named in the said Schedule (B.); and that the Amount of Saving which may accrue from any such Alterations in either of the said Schedules shall be appropriated to such Purposes connected with the Administration of the Government of the said Colony as to Her Majesty shall seem fit; and that Accounts in detail of the Expenditure of the several Sums of Thirty-three thousand Pounds, Eighteen thousand six hundred Pounds, and Thirty thousand Pounds, hereinbefore granted, and of every Part thereof, shall be laid before the Legislative Council of the said Colony within Thirty Days next after the Beginning of the Session after such Expenditure shall have been made.

XLI. 'And whereas it is expedient that Provision be made for the local Government of the different Parts of the said Colony;' ² be it enacted, That it shall be lawful for the Governor, by Letters Patent under the Great Seal of the Colony of New South Wales, to incor-

¹ This proviso, based of course on English Parliamentary practice, was for the first time incorporated in a Colonial Constitution by the Canada Union Act, 1840—thanks to the condemnation by Lord Durham of the irresponsibility in matters of finance engendered by its absence. On the evils arising in New Brunswick and in Jamaica see below, No. 40, and Section V, No. 13, note.

² Liberal thinkers of the day were great believers in the principle of local self-government. The Whigs in 1835 had reformed the municipal corporations in England; and both Lord Durham and Lord Sydenham considered a good system of local government to be one of the greatest needs of the Canadas. De Tocqueville, too, attached great importance to the local government system, particularly of course that of New England, in his estimate of American democracy. As a matter of fact these District Council clauses were quite unsuited to the conditions of New South Wales and were all but a dead letter from the first. But, ill adapted as the means may have been to the ends, the framers of the Act were justified in their suspicions of the centralizing tendencies in the Australian Colonies. See also below, No. 21.

porate the Inhabitants of every County within the said Colony, or of such Parts of Counties or other Divisions as to him shall seem fit, to form Districts for the Purposes of this Act, and by such several Letters Patent to establish a Council in every such District for the local Government thereof, subject to the following Provisions; (that is to say,) it shall be provided,

1. That every such District Council shall be elective, after the First Nomination thereof, as herein-after mentioned, the Elections being made in the several Districts or other fit Divisions, to be defined by the Charter within the District. . . .

2. That, until further Provision be made in this Behalf by the Governor and Legislative Council of the Colony of New South Wales, the District Councillors shall be Persons qualified to be elected Members of the Legislative Council, and shall be elected to such Office by the Persons qualified to vote in the Election of Members of the Legislative Council within the District in which the Election is made:

3. That no District Councillor shall hold any lucrative Office or Appointment under such District Council, or enter into or be concerned or interested in any Contract or any pecuniary Dealings with such District Council, under a Penalty or Penalties to be fixed in such Letters Patent of Incorporation:

4. That no District Councillor shall continue in Office for more than Three Years, unless re-elected:

5. That the District Council shall be presided over by a Warden, to be appointed and be removeable by Her Majesty, or by the Governor in the Name of Her Majesty:

6. That a District Surveyor who shall have passed an Examination before a competent Tribunal, approved by the Governor, shall be appointed in each District for superintending the Construction of Roads and other public Works undertaken by Authority of the District Council; and that the District Surveyor and all other Officers needed for the Exercise of the Powers of the District Council shall be appointed and be removeable by the District Council, subject to the Approval of the Governor:

7. That Accounts in detail of all Monies expended in every Year by or under the Authority of the District Councils be laid before the Governor and otherwise published in such Manner as may be directed by the Charter, or provided by any Law of the Governor and Legislative Council of the Colony of New South Wales.

XLII. And be it enacted, That it shall be lawful for each of the said Councils in the said Districts respectively to make Orders and Bye Laws for all or any of the following Purposes; (that is to say,)

For making, maintaining, or improving any new or existing Road, Street, Bridge, or other convenient Communication and Means of Passage through the District, or for stopping up, altering,

or diverting any Road, Street, or Communication within the Limits of the District:

For building, repairing, and furnishing public Buildings:

For the Purchase of such Real and Personal Property situate within the District as shall be required, in the Opinion of the Council, for the Use of the Inhabitants thereof

For providing the Means of defraying such Expences of or connected with the Administration of Justice and Police within the District as are or shall be herein-after by Law directed to be defrayed by the District, or out of the District Funds:

For providing for the Establishment and Support of Schools.

For raising, assessing, levying, and appropriating such Monies as shall be required for the Purpose of carrying into effect all or any of the Objects for which the said District Councils respectively shall be empowered to make Orders and Bye Laws, which Monies shall be raised, either by means of Tolls to be paid in respect of any public Work within the District, or by means of Rates and Assessments to be assessed and levied on Real or Personal Property, or both, within the District, or in respect of such Property upon the Owners and Occupiers thereof:

For the collecting and accounting for all Tolls, Rates, and Assessments imposed or raised under the Authority of any such Council, and of the Revenues belonging to the District:

For imposing and determining reasonable Penalties to be recovered from such Persons as, having been elected to Offices as herein-before provided, shall refuse to serve the same, or refuse or neglect to take and subscribe such Oaths of Office as shall by Law be required to be taken by such Officers respectively:

For determining the Amount and Time of Payment of all Salaries or other Remuneration of District Officers to be appointed under the Authority of this Act:

For providing for any other Matters which shall be specially subjected to the Direction and Control of the said District Councils respectively by any Law of the Governor and Legislative Council of the Colony:

Provided always, that no such Bye Law shall impose any Punishment of Imprisonment, or any Penalty exceeding Ten Pounds.

XLVI. And be it enacted, That in every Case of Vacancy of the Office of District Councillor if a new Election shall not be made within the Time prescribed by the Charter of Incorporation, or by any Law of the Governor and Legislative Council of the Colony respecting the Constitution of such District Council, the Governor shall nominate a Person duly qualified to fill the Vacancy.

XLVII. And be it enacted, That One Half of the Expence of the Police Establishment of the said Colony (exclusive of the Convict Establishment) shall be defrayed out of the general Revenue arising

from Taxes, Duties, Rates, and Imposts within the said Colony, and the other Half shall be defrayed by Assessment upon the several Districts of the Colony, in such Proportions as shall be from Time to Time fixed by the Governor and Legislative Council; and as soon as any Bill shall have passed the Legislative Council, and shall have been assented to by the Governor, for appropriating any Sum to the Service of the Police for the Year then next ensuing, and for apportioning an equal Sum among the several Districts of the said Colony, it shall be lawful for the Governor to issue Warrants under his Hand, directed to the Treasurers of the several District Councils, requiring them within Two Calendar Months from the Receipt of the Warrant to pay an Amount equal to the Sum assessed upon that District to such Person as the Governor shall appoint to receive the same, out of any Monies in their Hands belonging to the District.

XLIX. And be it enacted, That if the Amount ordered by such Warrant to be paid by the Treasurer of any District shall not be paid, within Two Calendar Months after the Receipt of the Warrant, to such Person as the Governor shall appoint to receive the same, it shall be lawful for the public Treasurer of the said Colony, or other proper Officer appointed by the Governor for such Purpose, to issue his Warrant for levying the Amount, or so much thereof as shall be in arrear, with all Costs and Charges of such Proceeding, by Distress and Sale of the Goods of the said Treasurer of the District, and of all or any of the Members of the said District Council, and if no sufficient Distress can be thereby made, then by Distress and Sale of the Goods of any of the Inhabitants of the said District. . . .

SCHEDULES referred to in the foregoing Act.

SCHEDULE (A.)						£
Governor	.	.	.	.	.	5,000
Superintendent at Port Phillip	.	.	.	.	.	1,500
Chief Justice	.	.	.	.	.	2,000
Three Puisne Judges	.	.	.	.	.	4,500
Salaries of the Attorney and Solicitor General, Crown Solicitors, and contingent and miscellaneous Expences of Administration of Justice throughout the Colony	.	.	.	.	.	20,000
						<hr/> £33,000

SCHEDULE (B.)						
Colonial Secretary and his Department	.	.	.	.	.	7,000
Colonial Treasurer and his Department	.	.	.	.	.	5,000
Auditor General and his Department	.	.	.	.	.	3,000
Salary of Clerk, and miscellaneous Expences of Executive Council	.	.	.	.	.	600
Pensions	.	.	.	.	.	3,000
						<hr/> £18,600

SCHEDULE (C.)						
Public Worship	.	.	.	.	.	30,000

DESPATCH FROM BAGOT TO STANLEY

*(C. O. 42/495: P. R. O.)*Government House,
Kingston, 26th Sepr. 1842.

MY LORD,

Soon after my arrival in this Province, it was represented to me by the several members of my Executive Council, that the time was arrived, when it would be right, on the score both of justice and policy, to admit the French Canadians to a share in the Government of the United Province, from which by the composition of the Council, they had hitherto been excluded.

To the plea of justice, thus recommended, I was prepared at once to give my concurrence, having, as Your Lordship knows, expressed my opinion, previous to my departure from England, that the spirit of the new Constitution, under which the Provinces were united and a representative form of Government was established, contemplated and required such an admission; and being convinced that, however circumstances might for a while have compelled the adoption of a different course, the conciliation of the interests of the two Provinces, and of the sentiments of the two races occupying them, could only be brought about by such a measure.

Of the policy however, of this course, and of the title of the French Canadians to such a mark of confidence, I was not convinced, bearing in mind the recent history of Lower Canada, and the opposition which the French party had offered to the principle and operation of the Act of Union.

I was therefore constrained to withhold all opinion or action upon this suggestion, until I could by personal observation form a judgment upon its truth and cogency. I was also, I acknowledge, loath to change the course of policy by which my Predecessor had surmounted the difficulties of carrying the Union into operation, and which seemed marked out for me in developing and executing its provisions.

Acting upon these views, I took every opportunity of ascertaining the present political and social condition of the Province, the sentiments and wishes of its inhabitants, the circumstances attending the introduction of the Union, the Working of the newly established representative system during the last Session of the Provincial Parliament, and the division of interests and parties existing in the House of Assembly. As it was not imperative upon me to call together the Legislature until the present Autumn, I deemed it advisable to defer that measure, until I had become better acquainted with the condition and wants of the Province, and had been able to

determine as to the policy which I should eventually adopt. This delay was so far disadvantageous, that I was prevented from judging personally of the feeling and temper of the House of Assembly, and was obliged in this matter to defer to the opinions of others, and further to postpone shaping my course until the very last moment, when the members should be reassembled for the opening of the Session, and I could become acquainted with their sentiments. It was also necessary for me to visit the Lower Province in order to judge for myself of the disposition of the French Canadians, which I took the first opportunity of doing.

Before describing to Your Lordship the result of my experience thus obtained, it will be necessary for me to revert to the circumstances of the two Provinces at the time when Lord Sydenham assumed the reins of Government, and to trace briefly the subsequent course of events.

On Lord Sydenham's arrival, he found the Lower Province deprived of a Constitution—the Legislative functions of the Government being administered by a Special Council consisting of a small number of members, nominated by the Crown.¹ The people,—at least a large portion of those of French origin—prostrate under the effects of the Rebellion,—overawed by the power of Great Britain—and excluded from all share in the Government—had resigned themselves to a sullen and reluctant submission, or to a perverse, but passive, resistance to the Government.

This temper was not improved by the passing of the Act of Union. In this measure, heedless of the generosity of the Imperial Government in overlooking their recent disaffection, and giving them a free and popular Constitution, such as it had not previously accorded to any, the most loyal, of the other British Dependencies, they apprehended a new instrument of subjection, and accordingly prepared to resist it. Lord Sydenham found them in this disposition, and despairing, from its early manifestations, of the possibility of overcoming or appeasing it, before the period at which it would be necessary to put in force the Act of Union, he determined upon evincing his indifference to it, and upon taking steps to carry out his views in spite of the opposition of the French party. In pursuance of this object, he took advantage of the existence of the Special Council to pass Several Ordinances which he deemed necessary to the future welfare of the Province, but which, containing enactments repugnant to the past habits and prejudices of the population, he expected would be violently opposed in the United Parliament, if deferred for the decision of that body. This further exasperated the French Canadians,

¹ The Special Council was set up by the Act of 1838 (1 & 2 Vict., cap. 9) which suspended the constitution of Lower Canada. It consisted purely of nominated members—under Durham of a few officials only, under Sydenham of a much larger number, largely non-official—and remained the Legislature of Lower Canada until the Union Act came into force.

and as Lord Sydenham, after one unsuccessful attempt, abandoned all further efforts at conciliation, they have from that time until my arrival, uniformly declared and evinced their hostility to the Union, as a Measure forced upon them, which has wounded their pride and not bettered their political condition; and have maintained a consistent, united and uncompromising opposition to the Government which was concerned in carrying it into execution. I regret to add that a strong personal animosity to Lord Sydenham, into the causes of which it is unnecessary to inquire, has greatly tended to increase this feeling.

In Upper Canada, the folly and wickedness of the parties engaged in the revolt of 1837 had aroused a spirit of indignation and loyalty in the Mass of the population, which had disposed them to receive willingly any Measure of the Imperial Government, calculated to prevent a repetition of such an occurrence, and to restore tranquillity to the Lower Province, by the absence of which their commerce and credit were seriously affected. A fierce struggle, however, was going on between the dominant party in the Government, (which, though numerically very small, had for years maintained an exclusive sway in the Executive,) and the large majority of the Inhabitants. That party, whose strength depended upon the exclusion of the popular voice, and upon the arbitrary exercise of the Imperial authority under their direction, was naturally very averse to a Union of the two Provinces, which in its principle broke up the exclusive character of their system, and in its provisions admitted to the fullest extent the representative form of Government. Lord Sydenham therefore found it necessary to break the opposition of this party, which, as it had at any time but a very precarious hold upon public opinion, he soon effected; and by this policy succeeded in gaining the good will and support of that portion of the population, which, under the name of Reformers, included those who on principle favored a popular system of Government, and those who with more moderate views joined in opposing the exclusive system which had hitherto prevailed. By the aid of this party he carried through the Legislative Resolutions approving and adopting the Union, which he had already obtained, without difficulty, from the Special Council of Lower Canada; and thus in February of last year that measure came into operation in United Canada by a Proclamation of the Governor.

When this took place, it became necessary to form a new Government to administer the affairs of the United Province, and to convoke a House of Assembly in compliance with the provisions of the Act of Union. Lord Sydenham, I have stated, found the Government of the Lower Province entirely in the hands of the British party, (the French Canadians having for many years been excluded from it) and that of the Upper Province in the hands of the party

above described. The French Canadians had placed it out of his power to invite them to a share in his Government, and their avowed opposition to the Union rendered such a course undesirable. In constituting, therefore, his new Executive Council, he selected such members of the former Government in Lower Canada as he thought fit, and detached from the Governing party in the Upper Province some of the ablest of the body, who were willing, after the passing of the Union, to forego their objections to the measure, and to assist in carrying out its provisions; and these, with two or three new members, completed his Council, which might be said to represent the Reform or popular party of Upper Canada, and the Moderate Conservatives of both Provinces, to the exclusion of the French, and the Ultra Conservatives of both Provinces.

It was of course important to his success that the House of Assembly should confirm this selection; and accordingly those who were friendly to his policy made great exertions to obtain the return of members who could support these views. In Upper Canada, where the greater part of the population was favourable or indifferent to the Union, and desirous of a popular form of Government, there was little difficulty in procuring the return of a majority in favor of the new system. The Conservative party, of all complexions, did not obtain more than 6 or 8, out of 42 Seats, and the extreme party on the opposite side obtained about a similar number. In the Lower Province on the contrary where the mass of the Population, except in the Eastern Townships,¹ was of French origin, and opposed to the Union and the Government, the case was far different; and the result, notwithstanding great and successful efforts of the British party in several of the French Counties, (in almost all of which cases the French attribute their defeat to illegal and violent practices,) was to give a large and compact majority of French or Canadians supporting the French party, to the almost entire exclusion of the British Conservatives;—the remainder being British reformers, or persons favorable to the new system of Government.

Out of the whole body the Government obtained a small, but inconsistent and uncertain majority. At the beginning of the Session, it is true, the members generally supported the Government in opposition to the extreme parties, but this aid was soon withdrawn. Lord Sydenham, feeling that it would be necessary to strengthen the position of the Executive in the House, and that if he could conciliate the French, the Government would be able to withstand

¹ The 'Eastern Townships' of Quebec lay near the United States border. They were predominantly English in population, many of the settlers being American loyalists or more recent immigrants from the United States; the lands were held on the British tenure of free and common socage; and, through the British American Land Company, a good deal of British capital was invested in them. For some years the old Assembly of Lower Canada had refused them representation, and they consistently opposed the French majority.

all other opposition, endeavored to adopt that course; but without success. Members of that party who accepted office from him, were invariably rejected from their seats, when they sought to be re-elected; and an overture, made to the party through Mr. Lafontaine,¹ was abruptly broken off. As the Session advanced the supporters of the Government, thus weakened, were so reduced in number, that, with all their exertions, some of the Most important Ministerial measures were passed by a bare majority, and in one or two cases by the casting vote of the Speaker,—and in this posture of affairs the Session closed.

I have been thus minute, because the above circumstances have become matter of history, and a knowledge of them is essential to a right understanding of the position in which I found affairs on my arrival. Previous to that event, and during the Administration of Sir Richard Jackson,² after the melancholy death of Lord Sydenham, nothing occurred which had a material effect upon parties either in the House or the Government.

Upon my arrival, I was, as I have previously mentioned, recommended by my Executive Council to introduce some members of the French Canadian party into my Government. This I was reluctant at the time to do, and preferred to pursue the course adopted by Lord Sydenham—availing myself however of a more favorable disposition which I found to exist among the French towards the Union and the Government, and evincing in all matters an impartial line of conduct towards them, fulfilling thus the spirit and letter of your Lordship's instructions, 'to know no distinctions of national origin or religious creed; to consult in my legislative capacity the happiness and (so far as may be consistent with my duty to my Sovereign and my responsibility to Her constitutional advisers) the wishes of the mass of the Community; and in my Executive capacity 'to administer the laws firmly, moderately and impartially.' I endeavored to adopt a tone of moderation towards the several conflicting parties, and to conciliate opposition by a course of strict justice: my appointments have been universally dictated by these motives. I chose for the Office of Inspector General, which corresponds somewhat with that of Chancellor of the Exchequer in England, a gentle-

¹ Louis Hippolyte Lafontaine, born in 1809, was the most remarkable statesman French Canada had yet produced. He was as cool and logical as Papineau was fiery and passionate. He had risen into prominence before the rebellion, but it was not until Papineau's flight that the different attitudes of the two men became apparent. Although, like all the French Canadians, opposed to the union, he had the good sense to resign himself to the inevitable, and the penetration to see the advantages that might be got from the fact that it was no more possible after the union than before to govern Canada without the French. Sydenham, however, he distrusted, and he declined his offer of a seat in the Executive Council. Until his retirement from politics in 1851 he remained the unquestioned leader of the French Canadians, and his close alliance with Robert Baldwin was never broken. He afterwards served with distinction for eleven years as Chief Justice of Lower Canada.

² Sir Richard Jackson, as Commander of the Forces in Canada, had acted as Governor-General from Sydenham's death until the arrival of Bagot.

man whose financial ability is generally acknowledged, even by his opponents.¹ I was led to hope that as this gentleman, after the Settlement of the principal questions which formerly agitated the Province, had adopted a more moderate tone, and had during the last Session afforded very useful assistance to the Government in some of its most important measures, no serious objection would be entertained to his admission into my Council, where I felt confident his services would be found highly valuable to the Country. At the same time, expecting a disposition among the Conservative party to adopt a similar tone of moderation, and to co-operate with me in carrying on the Government upon the principles I have described, I appointed one of that body to the Office of Solicitor General for Canada West.² In these respects I regret to say my anticipations have not been realized, as I shall hereafter have occasion to shew. In the Lower Province I appointed the most distinguished Lawyer at the Bar, a French Canadian, to the Office of chief Justice,³ and I offered the Solicitor Generalship to another French Canadian, the post having become vacant by my appointment of a gentleman of British origin to the Bench.⁴ These latter selections have had an important influence on public opinion in Lower Canada, and have mainly tended to bring to a favorable issue an event, to which I must now call your Lordship's most serious attention, and which is the main object of this Despatch.

Various circumstances induced me to postpone the meeting of the Legislature to the latest period allowed by the law: I accordingly fixed it for the 8th September. As the time approached, my Executive Council in a more formal manner urged upon me the expediency

¹ Francis Hincks, who had come to Canada as a young man in 1830, had soon become a close ally of Robert Baldwin, and the Toronto *Examiner*, edited by him, was the principal organ of the Upper Canada Reformers. Holding the view that half a loaf was better than no bread, he had, however, separated himself from Baldwin and supported the liberal measures of Sydenham, and in particular his public works and local government proposals. Believing that Bagot would continue this progressive policy he had accepted in June 1842 the offer of the Inspector-Generalship or Ministry of Finance. He was thus in office before Baldwin and Lafontaine, but he resigned with them at the time of the Metcalfe crisis and was a leading member of their 'second Ministry' of 1848-51. From 1851 to 1854 he was head of the Ministry. Finally, after being Governor successively of the Windward Islands and British Guiana, he returned to Canadian politics in 1869 as Minister of Finance under Sir John Macdonald. This post he held until 1873.

² It was the custom, throughout the period of the Union, to appoint separate Law Officers for the French and English divisions of Canada. The Solicitor-Generalship for Canada West had been held by Baldwin. On his resignation the place was filled by Mr. H. Sherwood, who had, however, not yet obtained a seat in the Assembly.

³ M. Vallières de St. Real, one of the ablest, most independent, and most respected of the French Canadian leaders. He had previously been raised to the Bench, but had been suspended from the exercise of his judicial functions for refusing to admit the validity of an Act of the Special Council interfering with the right of habeas corpus.

⁴ Mr. Day. No successor had actually been appointed when the change of government occurred.

of admitting some French Canadians to my Government, to which, on mature reflection, I could no longer offer sufficient reasonable objection. I felt satisfied that the distrust and ill will which had been engendered among the French Canadians by their long exclusion from a share in the administration of public affairs, would be dispelled by such a measure: that they would receive it as a boon with gratitude, and would give in exchange for it their support in the Legislature, and their assistance throughout the Lower Province in carrying out the provisions of the Union. Their leaders had already perceived that their opposition to the Union was fruitless, and that a continuance of it would only deprive them of the advantages of that Act, and expose them to many evils consequent upon their resistance. Some of them were therefore ready to abandon their opposition, and to meet any reasonable overture on my part. The opportunity once lost would not, I was convinced, be soon, if ever, recovered. I felt equally confident that this policy would meet with the support of the mass of British Reformers and moderate men of all parties in the Legislature and the Province; and that, if I succeeded in my attempt, I should have taken the first great step to consolidate the Union, to restore content to the Lower Province, without disturbing the tranquillity of the Upper, and to lay the foundation of the permanent prosperity of Canada.

I knew, however, that I could not hope to succeed with the French Canadians as a race, and my object was to deal with them as such, and not as a mere party in the House, unless I could secure the services of men who possess their confidence, and who would bring to my assistance, not only their own talents, and some votes in the House of Assembly, but the goodwill and attachment of their race, and that I could not obtain such services unless I was willing to place the individuals in a position in my Council which would prevent them from feeling themselves a hopeless minority against a suspicious and adverse majority—unless, in fact, I admitted them on liberal and generous terms. I accordingly sent for Mr. Lafontaine, the most talented and influential representative of the French Canadians in the House of Assembly, to whom Lord Sydenham made his overture; and after several communications with him and my Council, I addressed to him, by the advice of the latter, a note of which (with the subsequent correspondence, as printed by the House of Assembly) I annex a copy (A).¹ This recommendation of my Council, presented to me in writing, was accompanied with a notification, that if I declined to make so large an offer they would feel themselves compelled to resign. Its tenor, Your Lordship will perceive, is to offer

¹ Enclosure (A) was a letter dated Sept. 13th offering Mr. Lafontaine the Attorney-Generalship of Lower Canada along with three other seats in the Executive Council for his political associates, and announcing the readiness of Sir C. Bagot to offer the Attorney-Generalship for Upper Canada to Mr. Baldwin.

to the party four out of the eleven seats in my Executive Council, admitting Mr. Robert Baldwin, (although not a French Canadian) as a gentleman from whom the party could not conscientiously separate, and without whom they had expressed their determination not to accept of any terms.

This negotiation was necessarily deferred until the arrival of Mr. Lafontaine and the body of members at this place for the opening of the Session, and was further delayed in order to await the arrival of the Mail from England, which might possibly have contained information for my guidance. On the assembling of the Members I found that my attempts at conciliation had proved unavailing—that my appointments had either estranged friends whom the parties had left behind, or had failed to inspire confidence among those whose support I sought to gain. The High Conservative party, I ascertained, had made overtures to the French Canadians, and the Government, and were prepared to combine with them in order to overthrow my Executive Council, heedless of the inconsistency of such a course, and of the difficulties in which its success would have placed me. The result, if a trial of strength had taken place, would, with such a combination, have been fatal to my Council, who would immediately have resigned, and fatal, I am confident, to the tranquil Government of the Province for some time to come. I had, therefore, the strongest reason for Keeping my Council together as far and as long as I could do so advantageously and honorably.

With these views I did not hesitate to make the proposed offer. To my surprise and regret it was not accepted;—objections being raised to the principle of granting Pensions to the retiring Officers,—and the negotiation was broken off. The debate on the Address in reply to my Speech from the Throne commenced: an amendment containing a direct expression of want of confidence was moved: and the discussion threatened to be very acrimonious, and to place almost insurmountable difficulties in the way of healing the animosities it would have created, and of remodeling the Executive Council on safe principles, if the necessity of such a course should have arisen. Meanwhile I ascertained that the terms of my offer had not been made generally known to the French Canadian Members. I accordingly empowered one of my Council to read my letter to the House. The effect was instantaneous. The negotiation was renewed the next morning, the point at issue was compromised, and the arrangement was completed.

The sequel may be briefly told. The hostile amendment, of which I transmit a copy (B) was withdrawn; an echo to the speech was almost unanimously voted; and the next night an address (C) expressing in the strongest terms the satisfaction of the House at the course which I had taken, was moved by a Member of the British

party, and passed by a majority of 55 to 5¹ (all my Executive Council, except one, staying away,) its only opponents being the leaders of the ultra conservative party and Mr. Neilson,² all of whom had on the occasion acknowledged their disposition and their desire to admit the French Canadians to a share in the Government.

It now remains for me to describe to Your Lordship the immediate effects of my measure, and the results which I anticipate from it.

The House of Assembly has already expressed 'its unmingled satisfaction' at the course which I have taken. From the principle of it there was not *one dissentient voice*. I may confidently state that the same feeling exists in the other Branch of the Legislature. I have united the voices of seven-eighths of the House of Assembly in present support of the Government. Some defection must be expected, but none by which the Government will be at all weakened. I have met the wishes of a large majority of the population of Upper Canada and of the British Inhabitants of Lower Canada. I have removed the main ground of discontent and distrust among the French Canadian population; I have satisfied them that the Union is capable of being administered for their happiness and advantage, and have consequently disarmed their opposition to it. I have excited among them the strongest feeling of gratitude to the Provincial Government, and, if my policy be approved by Her Majesty's Government, I shall have removed their chief cause of hostility to British Institutions, and have added another security for their devotion to the British Crown. The lapse of five years, under the recent extraordinary circumstances of Canada, has created great Changes in the opinions and feelings of men placed in the position of the French Canadians—Those who never swerved from their loyalty, and whose number I believe has been much underrated, feel grievously the hardship of being included in the same punishment of suspicion and disqualification with those upon whom it justly fell. These, on the other hand, finding themselves wholly unable to resist the power of Great Britain, have learned to consider how little they can gain by opposing her reasonable demands, and how much they may lose by resisting them. The result has been an earnest desire to recover the good opinion of the Mother Country, and to be restored to its confidence, in a manner consistent with their honor and the

¹ Enclosure (B) was an amendment moved by Mr. Baldwin in the usual form of an Address in Reply, save for the expression of want of confidence in the Executive Council at the end. The Address (C) expressed the 'unmixed satisfaction' of the Assembly at the invitation of His Excellency to the French 'to share in the government of the country and thereby to carry into effect the wise and just designs of the Imperial authority'.

² John Neilson, a Quebec journalist who had emigrated from Scotland as a boy, was for some years the chief British supporter of Papineau. He was, however, essentially moderate in his views, and was won over by the concessions of Goderich to a general support of the Government. He strongly opposed the rebellion, but was also opposed to the union and to responsible government; and after 1840 he ceased to count politically.

pride which their separate origin naturally inspires. The Union did not offer that occasion; it was imposed upon them without their being consulted, (for they had no representation in the Special Council) and without regard to their remonstrances. The present crisis, however, has offered the occasion: I have seized it; and I cannot use terms too strong in expressing to Your Lordship my conviction, that the result will, without the least sacrifice of British interests, or the least danger to British Institutions in the Province, tend to establish and confirm the principle and main intentions of the Union, and thus conduce to make United Canada one of the most happy, contented, loyal and prosperous portions of Her Majesty's Dominions.

There will I am aware, be at first a great out cry here among a minority in both Provinces. This will soon moderate. There was the same when I appointed two talented and irreproachable French Canadians to the Bench in Lower Canada; but the same parties who then complained, now declare that they have not, and never had, any objection to the admission of French Canadians, even into the Government. The change, I know, will be very unpalatable to those who approve of an exclusive system of Government, and who wrongly imagine that any favor shown to their opponents is a total transfer of power and patronage into their hands. Great efforts will be made to convince the people and Government of Great Britain that by ceasing to maintain an exclusive system, I have abandoned all power of control; and the recent history of Canada has rendered it easy to create such an impression. If these are allowed to succeed, my attempt will fail, and though I be permitted to proceed in it, my efforts will be paralyzed. But if Her Majesty's Government believe that I have not acted, in this matter without due consideration and reflection;—if they weigh the various feelings of interest, of prejudice and of animosity which are likely to influence the opinions of individuals belonging to the Province, against the opportunities which I, as Governor General, possess of collecting and comparing the opinions of all parties—against the absence of all interest on my part, except for the welfare of the Province—and against the sense of grave responsibility under which I have acted—they will not withhold from me their prompt sanction and their firm support, which are essential to the successful issue of my policy.

I have, etc.

(signed)

CHARLES BAGOT.

LETTER FROM HOWE TO FALKLAND¹

(C.O. 217/186: P.R.O.)

Halifax, December 26, 1843.

MY LORD,

Having, at very heavy personal sacrifice, deemed it my duty to resign into your Lordship's hands the offices I hold, I was prepared to defend the course I had taken, on the floor of the Assembly, and to meet the objections which might there be urged by your Excellency's advisers, in the presence of those who must ultimately decide on the wisdom and propriety of my conduct. This I believe, is the constitutional mode of adjusting such points as are now at issue between us—a departure from it has elsewhere produced embarrassment, and may here complicate what seems to be a very simple question. Further correspondence, I fear, can now do no good, but I am reluctant to appear to treat with disrespect a formal communication from your Lordship and must therefore offer a few observations upon the letter of the 25th inst. with which I have just been favored.²

¹ Joseph Howe was certainly one of the most remarkable men British North America has produced. The son of an American loyalist, he first became prominent as editor of a Liberal newspaper in Halifax, *The Nova Scotian*, and a speech he delivered in his own defence when tried for libel in 1835 at once established his reputation as the leading orator in the province. Soon afterwards he entered the Assembly and became the unchallenged leader of the Liberal opposition. In 1839, taking advantage of the criticisms passed by Lord John Russell upon the Durham Report, he published in vindication of the report the famous *Letters to Lord John Russell*, which gave him a wider fame. Next year, as a result of his successful agitation against Sir Colin Campbell and of a visit of the Governor-General, Lord Sydenham, he was offered, and accepted, a seat in Lord Falkland's Executive Council. He retained it until the breach with which these letters (Nos. 19 and 20) deal. After four years in opposition he returned to power under Sir John Harvey and remained for a considerable period the real head of the Government. In the early fifties he was perhaps at the height of his powers, and his letters and speeches were full of eloquence and vision (see below, No. 39). Afterwards he seemed to find provincial politics too small for him and gradually lost ground to his able and ambitious rival Charles Tupper. At the time of the confederation negotiations he held a position as Fishery Commissioner under the Reciprocity Treaty with the United States, and so took no part in them; and a little later, animated no doubt partly by personal dislike of Tupper but partly by worthier motives, he put himself at the head of the strong Nova Scotian feeling against confederation. He carried the province at the first Dominion elections, but he fully realized that some slight readjustments of the terms were the utmost that could be hoped for, and on the promise that these would be made entered the Dominion Ministry in 1869. His health was now failing and in 1873, after being appointed Lieutenant-Governor of his native province, he died. Howe's impetuosity and self-confidence, and his love of a joke, sometimes led him to make mistakes, but at his best he was a rare combination of orator, thinker, and statesman; and at the same time he was to the end felt by the people to be one of themselves.

Lucius Bentinck Cary, tenth Viscount Falkland and a direct descendant of the Royalist leader, was Lieutenant-Governor of Nova Scotia from 1840 to 1846. He was by no means without ability, but was lacking in sympathy and tact. From 1848 to 1853 he was Governor of Bombay.

² The letter of December 25 to Messrs. Howe, McNab, and Uniacke justified the

When I consented to take a seat in the Executive Council, the party with whom I acted formed a considerable majority in the Assembly, which majority was not weakened by the elections of 1840. These gentlemen, during the three years I sat in the Council were represented at the Board but by *two*, and for a short time, by *three* members who enjoyed their confidence. Their opponents, a minority in the House, had, during all this time, *six* Representatives in Council.¹ This inequality, as your Lordship knows, produced much dissatisfaction among the Liberal party, notwithstanding which, by great exertions, a majority of them were rallied to give a steady support to the Government. This was done, because the leaders were anxious to give to her Majesty's Government their best assistance in carrying out a new and advantageous system of administration in British America, and because they relied on the pledge given by Lord Sydenham, and subsequently by your Excellency, that, as opportunities offered, the inequality should be redressed. In the new House, as I judge of the returns, this party without taking Mr. Uniacke and his friends into consideration, will constitute at least one-half the members—they would have had, even if Mr. Almon had not been appointed, but *two* out of the *eight* at the Board. This, your Excellency must acknowledge, would have been a sufficiently slender 'representation' of the 'political sentiments and interests' of one large party 'in the Legislature', yet I was willing to have met the House, rather in deference to your wishes, and the advice of friends, than with any very confident hope that, without an increase of Influence in Council, the party to whom I have reference would have been satisfied. My argument to them had always been, 'have patience—as opportunities offer justice will be done'. While a disposition was shown to do justice, as vacancies occurred, force was given to this argument. When however, your Excellency announced your intention to appoint Mr. Almon, thereby giving one half the House a representation of *two* while the other was to have *eight*, I felt that the 'policy was changed'—that justice was not to be done—that the only ground upon which I induced my friends to support the Government, or could hope to induce them, was to be struck away, and I left in the position of sanctioning a policy by which a fair repre-

offer of a seat in the Executive Council to Mr. Almon, which had caused their resignation, on the ground that Mr. Almon shared His Excellency's views as to the necessity of a non-party government in Nova Scotia.

¹ The other Reformers were James McNab, a close associate of Howe's, and William Young, who had resigned his seat on becoming Speaker of the House of Assembly. But Howe was hardly justified in taking no account of J. B. Uniacke, a member of a well-known Nova Scotian family, who had been a member of Sir C. Campbell's Executive but became converted to Howe's opinions, resigned his seat, went in again with Howe, and was now resigning with him. Of the six other members, the most notable was J. W. Johnston, the Attorney-General, the leading lawyer of the Colony—a convinced opponent of responsible government, and for many years Howe's most formidable antagonist. Mr. Almon was Johnston's brother-in-law.

sentation of their political sentiments and interests was to be indefinitely postponed. It was no wish, therefore, to 'wrest the prerogative from the Queen's Representative', which induced me to resign, but a desire to guard myself from a total loss of confidence and influence in the Assembly, by which I would be deprived of all Power either to serve Her Majesty or benefit the Province. I respect the Queen's prerogative as much as I do the privileges of the people, and your Excellency knows, that, during the three years I served you, I never counselled its surrender, or attempted to tamper with it in the slightest degree; but it would be a hard case, if the prerogative could be so strained, as to compel public men to serve the Crown, at the price of their consistency, and the wreck of their reputations.

Assuming that Mr. Uniacke and his friends were to act with mine, then the case would be but little better, because we, who had good reason to count upon a majority of the Assembly, were to have but *three* seats in the Council, while the minority led by Mr. Johnston, were to have *five*, even without Mr. Almon, and with him they were to have *six*. Under these circumstances, it was a proof of our desire to avoid all embarrassment, that we consented to meet the House with a Council thus constituted, and it is not surprising that we should have opposed an appointment, which we believed could not, even upon your Lordship's own principles, be defended.

With respect to 'party Government', your Lordship is well aware, that, for many years prior to your arrival, party government existed here in its most offensive form—the minority having all the Executive influence, and the entire distribution of patronage, while the great body of the people had nothing but a representation of two to one in the Assembly. Your Lordship found the Executive and Legislative Councils, and almost all the public offices filled from the minority, under this rigorous party government to which your present advisers clung as long as it could be sustained. They now profess to dislike a party government merely because her Majesty has declared that the interests and opinions of the majority are hereafter to be respected, and yet, being a minority, they seek to preserve in the Executive Council, an unvarying and clear ascendancy.

It is true that Your Excellency has done a good deal, as opportunities offered, to win confidence and support, by a fair distribution of patronage: a few satisfactory appointments have been made to the Executive and Legislative Councils, but, at both Boards, and in public commissions and departments, the preponderance is still largely in favor of that party who support your present advisers. It is perhaps, your Lordship's misfortune rather than your fault that more could not be done in a short administration, to redress this state of things, but you will at once perceive, that the only guarantee the people had, that it would ever be improved, was founded on the assurance that the party who have equal, if not superior claims, with

those who have so long profited by this patronage, would fairly participate in those claims which were to influence its distribution.

The desire for what is called 'party Government' has arisen in this Province out of circumstances over which neither your Excellency nor myself have had much controul. For several years your Lordship was called upon, almost weekly, by the friends and supporters of your present Advisers, to dismiss from your Council the few Representatives which the majority of the Assembly had there—and latterly others have claimed a party Government for two reasons, first because they believed that those who gave your Lordship hollow support, fared equally well with those who sustained the administration cheerfully—and, secondly, because circumstances, to which I need not refer, had created the impression that the Council was not only divided upon important public questions, but that some of its members entertained for each other no very friendly feelings.

I have never asked and do not now desire, a party government formed of but one interest, to the exclusion of all others, but it does appear to me that it would be better to form a strong government, of gentlemen representing different interests and different sections of the country, but agreeing upon common principles and common measures, and secure of a good working majority in the Assembly, rather than to attempt, by an exercise of the prerogative, to bind men together who have but few private or public ties, and who cannot fail to weaken any government by the absence of that united personal influence upon society and public opinion, which the members of Council should steadily exert, and without which they cannot expect support either in Parliament or throughout the country.

To Mr. Almon, personally, I have no objections—his elevation to the Legislative Council I should not have opposed, but your Lordship's opinion of his political position differs widely from mine. Mr. Almon supported the last administration, which was of a decidedly exclusive party character, and whatever he may have said, in the few brief public observations he made from the Hustings, he voted and acted with the minority in the Township against Mr. McNab, a member of the Government, and with those who have incessantly demanded a party government, based on a Representative minority. Mr. Almon's party connexions and opinions were, then, sufficiently decided; but I have other objections. I did not think it wise in making an appointment to the Executive Council, under the present system, to pass over the members of both branches of the Legislature, *of all parties*, in favor of a gentleman, who had never represented any constituency, and upon no graver public necessity than his relationship to Mr. Johnston.

That I did consider that those members of Council who had opposed the dissolution, with their friends in the Assembly, were 'in a position' to enable you to carry on your Government without

Mr. Johnston, Your Lordship may remember—that I did not ‘insist on his dismissal’ is proved by the fact, of my consenting to serve with him, although I never attempted to conceal from your Excellency that some change or modification of the Council might be forced upon the Executive by the Assembly. What might have been Mr. Johnston’s opinion as to the propriety of retaining my services had he been confident of a majority, I cannot determine, but I would not like to hold a seat by so frail a tenure as the moderation of those by whom he is sustained. My belief is, that an erroneous impression has been made upon your Lordship’s mind, both as to the composition of the new House, and the construction which will be placed upon the policy of the new appointment. Those who differ with my friends and myself, will soon have an opportunity of testing the sobriety of our judgment and the accuracy of our calculations. I thought, and still think, it would have been better to have tried the temper of the new House, without making any appointment, or to have made one that would have brought to the Government some Parliamentary support.

‘The claim’ which we ‘assert’ in our ‘resignations’ your Lordship will permit me to observe, is simply this:—that we not only have the right, but are bound, to retire from the council when a course is adopted which we believe will damage our public characters and shake the confidence of the Assembly in the Executive Government. I should be unworthy to advise your Excellency, if I did not back the sincerity of my opinions by the cheerful surrender of office, and your Excellency might reasonably complain, if I clung to what was only given to me as a guarantee for sincerity, and ought to be yielded up as a pledge of grave and deliberate conviction.

Retirement from the Council does not necessarily involve ‘opposition’ to the Government. Personal or factious opposition to your Lordship I am incapable of. Whether or not your advisers are to meet with hostility, in the Assembly, will depend upon the wisdom of future arrangements, the soundness of their principles, and the value of the measures they bring down. I fear from the course pursued that a large body of the leading men in the Legislature will be driven into opposition; and it is more than probable that unless those who have advised it, materially change the views by which they paralyzed the last Administration that they almost exclusively influenced, I shall be compelled, however reluctantly, to press upon them, at times, what may appear to be the opinions and interests of the country.

I have the honour to be, with great respect your Lordship’s most obedient, very humble servant,

(signed) JOSEPH HOWE.

DESPATCH FROM FALKLAND TO STANLEY

(January 1, 1844) (EXTRACT)

(C.O. 217/186: P.R.O.)

I will now make a few observations on the object and tendency of this plan of proportionate or numerical representation. Messrs. Howe, McNab and Uniacke do not attempt to deny that they have influenced the bestowal of by far the greater share of Patronage though they have been a minority in the Council. What then do they hope to gain by an augmentation of their number, unless they mean that every appointment, and every measure must be put to the vote at the Board, and that the Governor *must* in each and every case go with the majority? If they do *not* mean this they mean nothing; and if they *do* mean it they desire to render the Governor little else than the recording Clerk of the decisions of a body in which, if there were two parties the smaller one would sit with the certainty of being outvoted, the representation of the minority being a nullity, and by which, whether it consisted of one party or of two, the Royal Prerogative would be usurped, while the Board itself, the Governor not appointing its Members, would become in effect elective.

I have ever been anxious to avoid any course which might bring the exercise or extent of the prerogative in question, being convinced of the bad consequences which generally ensue from collisions between the Executive and the Elective branches of the Legislature.

I know that Governments formed on the model of that of Great Britain can only exist by the forbearance of those among whom political power is distributed, and my letter to the seceding members of the Provincial Administration is evidence that I have not been wanting in this quality for the last three years. This contest has been forced on me, and my present position bears a remarkable similarity to that of the Governor General of Canada, with however this important difference that those who have deserted me so far from complaining of any antagonism of principle existing between us, bear testimony in strong terms to the cordiality, kindness, and confidence, with which they have been treated, but the concession of what these gentlemen demand, would, in my opinion, involve the early separation of these Colonies from England; because, if the Queen's Representative were to submit to the usurpation of his authority by some five or six of his Council who would necessarily be driven to use it so as to perpetuate their own power, the evils accruing from such a state of things would be so great as, after a time, to drive the people who might suffer under them to transfer their allegiance to any Country which would relieve them from subjection to such a domination.

I have, etc.

(signed) FALKLAND.

REPORT OF COMMITTEE OF LEGISLATIVE COUNCIL OF NEW SOUTH WALES ON GENERAL GRIEVANCES (EXTRACTS)

(C.O. 201/350: P.R.O.)

[*District Councils Clauses*]

Without meaning in any way to impugn the principle of Municipal Government, your committee may observe, that it might have been inferred *a priori* that this was a matter of so purely local a character, that any legislation of the Imperial Parliament must, of necessity, prove a failure. The obviousness of this inference too, is very much strengthened by what had previously occurred in the Colony; two several attempts having been made by the local government, to carry through the local legislature of that day, a measure of a similar—though far less objectionable character, both of which had been unceremoniously, if not indignantly, rejected, even by a Council formed wholly of nominees of the Crown.

Under such circumstances, it was not to be expected that an attempt by the Parliament of England to reduce to legislation an untried theory like this, which had been reluctantly forced upon the Canadas, and which, even upon the short experience of it which has been had there, is generally pronounced a complete failure, would prove more successful—than the efforts made on the spot by the local government which was its author, and naturally possessed of a greater fund of the local knowledge, requisite to fashion, and adapt its details to the tastes, habits and requirements, of the community it was intended for.

The result of this Imperial Legislation in the Colony has been just what might have been anticipated. It has rendered the institution which was previously unpalatable and unpopular, odious and abhorrent to all classes. Nor is this result to be wondered at, considering the manifest inequity and rigour of its provisions, and more especially of that provision, to which general consent has given the name of 'the Algerine clause',¹—a clause which in fact, on the one hand, imposes on every district of the Colony, all the liabilities of a joint stock company, rendering every man's property liable for the whole amount of rates leviable in the district, without on the other hand establishing that remedy for contribution, which in joint stock companies the payers of more than their own proportion of a charge, or debt, always possess against their co-partners making default.

This clause alone is quite sufficient to account for, and justify, the universal alarm and disgust, this measure has justly excited, and to

¹ This is probably a reference to the fact that O'Connell had dubbed the Act of 1825 for the suppression of illegal societies in Ireland 'the Algerine Act'—the Dey of Algiers being then regarded as a typical example of a tyrant.

render every attempt to patch it up, by the local government here, as odious—as it must prove abortive. But this is not, in the opinion of your committee, the only obstacle to the working of this municipal scheme. The scattered and dispersed state of our population, distributed as it is over an area of about 25,000,000 acres;—the pastoral pursuits and habits of the great bulk of that population, all tending to dispersion, instead of that concentration which is the essence of municipal government;—the very small portion of lands held by grant or purchase from the Crown, being, according to a Return laid on the table of your Honorable House, only about one-seventh of the whole area of the nineteen counties,¹ within which such grants and purchases have been made, and in which these District Councils are sought to be established;—the manifest inequity, in such a state of the ownership of the soil, of endeavouring to cast, on the proprietors of this small portion, the entire expenses attendant on the construction and repair of roads and bridges throughout the entire area of these lands, so large a portion of which is still held by the Crown, without a proportionate contribution from the Crown Revenue derivable from these lands;—the want of a respectable and concentrated population to work these institutions;—the attempt to saddle the districts, and the Colony at large, with the entire expenses attending the coercion and restraint of the convict population, from whose presence among us, now that transportation and the system of assignment have been abolished, no countervailing advantages, nothing in short, but unmitigated evil accrues;—the obvious and glaring impolicy of taxing land or its products at all;—these are among the principal grounds of objection which are entertained to this measure by so large a majority of the colonists that these grounds of objection may be pronounced to be almost universal.

Nor although the attempt to engraft similar institutions on the Canadas, should prove as successful, as the most sanguine supporters of them in those provinces have predicted, would it follow, that they are at all adapted to this Colony. The Canadas are purely of an agricultural character; New South Wales purely of a pastoral. The success of the population in the former Colonies depends mainly on their concentration; that of the Australian Colonies, altogether, on their dispersion. There it is desirable that there should be a continuous and uninterrupted occupation of the country; that farms should not only adjoin—but be of moderate extent;—here it is equally indispensable that each homestead should be surrounded by a wide area of appurtenant pastures. There impenetrable forests, or impassable morasses, oppose on all sides impediments to colonization, and continuous and practicable roads are consequently the first want of the people;—here, an open forest, or extensive plains, traversable in all directions, render the construction of roads utterly

¹ On the 'nineteen counties', see above, p. 54, note 1.

useless, unless in the immediate vicinity of large towns, and unless, perchance, some impassable gully, or impracticable defile, here and there intervene to require a bridge or pass.

Your committee, however, do not mean to imply, that some power of local taxation, and local control, may not be necessary. On the contrary, as far as the local requirements of the rural districts extend, there can be no doubt that public works, such as those above enumerated, or any other which the local necessities of the population may demand, would be far better, and more economically supplied by the inhabitants of such districts themselves—out of local funds, than by the central government—out of the general revenue. It is, however, to district roads, and district works, properly so called, that, in the opinion of your committee, this power of local control and local taxation should be limited.

Burdened—as this community still is, by an amount of taxation unprecedented in proportion to its population, not only in other British Colonies, but in the history of the world, and required mainly to support the monstrous establishments of an effete system, from which the Colony never derived any, but secondary advantages, as will be hereafter shewn, in comparison with the primary and gigantic benefits, that have accrued from it to the Mother Country—your committee can never lend their sanction to any scheme of local taxation, which shall tend to increase the already intolerable burden of taxation, under which all classes groan. They consider that Municipal Government itself may be purchased too dearly, even where the habits and requirements of the people are adapted to it; here, where on the contrary, it is for the most part unnecessary, and must so continue—until the occupation and pursuits of the people undergo a radical change, your committee can never consent to its introduction under any other terms than that whatever amount the districts have to pay for local purposes, shall be deducted from the present amount of their general contribution to the State.

If brought under consideration in this way, there would be no difficulty in introducing that measure of Municipal Government, for which the Colony is ripe; to attempt any other system would be to disgust the entire population, and thus—by rendering Municipal Government distasteful at the outset, to retard its growth and ultimate establishment in all the districts.

Responsible Government.

The next constitutional grievance, to which the attention of your committee has been directed, is the total absence of all responsible government.

Nothing can more clearly evince the evil tendencies of that entire separation of the Legislative and Executive powers which exists here

at present, than the perfect indifference, if not contempt, with which the most important decisions and resolutions of your Honourable House have been treated by the head of the government during the course of this Session. Notwithstanding the insignificant minorities in which the confidential servants and advisers (if any such there be) of the government have been left on every important subject which has engaged the attention of the House during the present Session, the condemned policy and measures of the executive are still persevered in, as if they met the fullest concurrence and support of overwhelming majorities. Night after night the decisions of the representatives of the people—decisions, in many of the most important of which, some of the most experienced and influential of the unofficial nominees of the Crown have concurred, have been utterly disregarded, and every possible expedient resorted to in order to deprive the Council of that control over the public purse, which the Imperial Legislature on the one hand, and successive Secretaries of State, with the sanction of the Lords of the Treasury on the other, have over and over again placed at its disposal.

Judging from the systematic attempts which have characterised the whole course of the administration of Sir George Gipps, Knight,¹ to acquire the uncontrolled disposal of that portion of the Territorial and Casual Revenue, which prior to his arrival had been placed by solemn compact at the disposal of the late Legislative Council,²

¹ Sir George Gipps, Governor of New South Wales from 1838 to 1846, had been a soldier but had abandoned his military career to become private secretary to Lord Auckland, then First Lord of the Admiralty in the Whig Ministry. He was one of the three Commissioners sent to Canada in 1835. As Governor of New South Wales he soon distinguished himself by his active promotion of immigration, and by his vigorous and successful opposition to the Wakefield theory of selling land at a uniform price (see below, p. 228, note 1). Gradually, however, his views and those of the colonists diverged. With the depression of the early forties the land policy for which he stood became unpopular (see below, Section II, No. 13), and soon the fixed idea that he cared nothing for colonial interests was so strong that public opinion took the side of the squatters against him. The Order in Council of March 1847 (below, Section II, No. 15) perhaps went rather farther than he would have gone to meet them, but then before long it was being denounced as handing over the colonial lands to the squatting interest. His views on constitutional questions were at first considered liberal, but later public opinion left them far behind and he was denounced as a tyrant and a reactionary. There is no doubt that Gipps, who was a man of warm temper, was intolerant of opposition and was too prone to allow his private feelings to be influenced by public controversy; but he was a man of great ability and courage, and the colonists under the leadership of Wentworth and Lowe made far too little allowance for his real devotion to the interests of the colony, which on many points he understood better than they. He returned to England worn out by ceaseless strife, and within a few months he died.

² By a despatch of Mr. T. Spring Rice, dated Nov. 15, 1834, Bourke had been instructed to defray out of the colonial funds the expenditure on police and gaols, except that immediately connected with the custody and superintendence of the convicts; and by the same despatch the Government acceded to the principle that any surplus of the territorial and casual revenues should be paid into the Colonial Treasury; but the expenses incurred on account of emigration and any other charges the Government might think proper were first to be defrayed. Lord Glenelg, however, on July 10, 1835, expressly declared that uncontrolled power of applying

and had been accordingly for several years previously appropriated by that body, as part and parcel of the General Revenue,—it would seem to have been a favourite, if not paramount object with him, from the first moment of his arrival among us, not only without any sanction or authority from the Home Government, but, as far as appears from the printed correspondence on the subject, laid on your Table, in conformity with an Address from your Honorable House,—in defiance of his instructions, to sow the seeds of that controversy, and contest about the control of this particular branch of the public revenue, which was the original source, and ultimate cause of the rebellion in Canada. Your committee cannot but consider it to have been one of the peculiar misfortunes attending His Excellency's appointment, that he should have come amongst us deeply imbued with those high prerogative doctrines and pretensions which he imbibed while executing the duties of Commissioner to that ill fated Colony; and that he should have committed himself—from the first hour of his government—to the assertion of claims on the part of the Crown, which the Ministers of the Crown had surrendered for an equivalent. . . .

Recommendations.

First.—That the schedules annexed to the 5th and 6th Vic., cap. 76, be repealed, and the whole control of the General Revenue placed in conformity with the provisions of the Declaratory Act, 18 Geo. 3, cap. 12, sec. 1, under the control of the Governor and Legislative Council.¹

Or, if those schedules be persisted in, that the Act 5 and 6 Vic., cap. 76, be amended, so that the whole of the hereditary revenues of the Crown be surrendered as an equivalent for the Civil List, and placed at the disposal of the Local Legislature in like manner as they have been in Canada.²

Second.—That so much of the same Act, 5 and 6 Vic., cap. 76, as relates to the establishment of District Councils, be repealed.

Third.—That the grievance connected with the Police, Gaol and Judicial Expenditure³ be adjusted on the terms prayed for in the

the Crown revenues was still reserved; and however conciliatory Bourke may have been, it seems clear that the Legislative Council had no ground for speaking of any 'compact'. The real grievance lay in the fact that the police and gaol expenditure had come to be far more than the £25,000 per annum which had been the Treasury estimate.

¹ The famous Act 18 Geo. III, cap. 12—a last attempt to conciliate the Americans—declared that no tax would hereafter be imposed by the King and Parliament on any of the colonies in North America or the West Indies 'except only such duties as it may be expedient to impose for the regulation of commerce': and the net produce of these duties was always to be applied to the service of the colony in which levied in the same manner as duties raised by authority of the Colonial Legislature.

² In the Australian Colonies 'the hereditary revenues of the Crown' meant simply the Crown land revenue: in Canada there were other revenues arising under the seigniorial system of tenure in addition.

³ See above, p. 81, note 2. The judicial expenditure was not mentioned in the

Address to Her Majesty, and the Petitions to both Houses of Parliament, prepared by your committee, and recommended to your adoption.

Fourth.—That an humble Address be presented to Her Majesty, beseeching Her Majesty to direct that the Government of this Colony be henceforth conducted on the same principle of responsibility, as to Legislative control, which has been conceded in the Canadas, and that a tribunal for impeachments be established by law.

Fifth.—That an Act be introduced to enable persons having claims of any description against the Local Government, to sue the Colonial Treasurer, or other public officer, as a nominal defendant, under such limitations as may be necessary to prevent frivolous and vexatious suits.

Sixth.—That an humble Address be presented to Her Majesty, praying that Her Majesty will be graciously pleased to place the Judges of the Supreme Court on the same tenure of office, and security of salary, as belong to the Judges in the Mother Country, and thus effectually prevent the purity of the administration of justice from being hereafter subjected to any suspicions, or doubts in the minds of Her Majesty's subjects in these Colonies.

W. C. WENTWORTH.
Chairman.¹

Legislative Council Chamber,
Sydney, 6 December, 1844.

arrangement of 1834, but doubtless the same principle of division of the burden according as the expenditure was or was not directly connected with the convict establishment, was applied.

¹ William Charles Wentworth, the greatest of Australians, was born at Norfolk Island in 1793, his father being a Government surgeon. He was one of the party of three who first crossed the Blue Mountains: he published, while in England in 1819, one of the best early books upon Australia; and he founded in 1824 the *Australian*, the first Australian newspaper. He was the bitter opponent of Governor Darling, but was in high favour with Bourke, who sympathized with his efforts to obtain a representative constitution for the colony. He and Sir George Gipps were inveterate foes, Gipps having withdrawn his intended nomination to the Legislative Council on account of a shady land transaction with some Maori chiefs. Afterwards, when the land question became the great political issue, Wentworth declined in favour and his place as the idol of the populace was taken by Robert Lowe (see below, p. 262, note 1): for not only had he become the leader of the squatter party, but he was an honest opponent of democracy (see below, No. 49). In the constitutional disputes of the early fifties, so long as the Imperial Government could be said to be withholding anything from the colonists, he became a second time their leader, but after Sir John Pakington's concessions it was once again shown that he was out of sympathy with the growing democracy of the colony. Feeling this himself he spent his last years in England—not, however, until he had established yet another claim to fame as the founder of Sydney University. Wentworth was also one of the first Australians to rise above particularist feeling and become conscious of the national destiny of his country (see below, No. 53).

DESPATCH FROM METCALFE TO STANLEY

(May 13, 1845) (EXTRACT)¹*(Kaye, Selections from the Papers of Lord Metcalfe.)*

As this despatch touches so much on parties, I ought not to omit to mention that the whole colony must at times be regarded as a party opposed to her Majesty's Government. If any question arises, such as that, for instance, of the Civil List, in which the interests of the mother country and those of the colony may appear to be different, the great mass of the people of the colony will be enlisted against the former. There is, in consequence, great zeal in promoting interests exclusively colonial, and much want of it on subjects in which the colony, although vitally concerned, is involved as a portion of the British Empire. The general prevalence of this spirit is shown in the obstacles which have prevented the introduction of a proper militia bill into the Legislature; in the throwing out the exemption from duty of supplies for her Majesty's forces; in the delays which have occurred in the payment of the debts due to her Majesty's Government on account of pecuniary advances for the service of the colony; and in repeated endeavours to cast on the Imperial Treasury charges which the province is unwilling to admit as a burden on itself. This spirit is manifest on every occasion which has a tendency to call it forth, and is not confined to any particular party. It is aggravated by the establishment of that form of government which renders the executive servants of the Crown practically more dependent on the Legislative Assembly than on the authority by which they are appointed; and it will require unceasing vigilance on the part of her Majesty's representative to secure in any degree the just rights of the Crown, for due attention to which he will never be able to rely wholly on the ungoaded alacrity of any provincial functionary, with the exception of the civil secretary.² The inducement to take high

¹ Charles Theophilus, Baron Metcalfe, had had a brilliant career in the service of the East India Company, and had for a year acted as Governor-General: during this time he passed an ordinance removing the restrictions on the liberty of the Press, which cost him the favour of the Directors. He was afterwards Governor of Jamaica (1839-42) and had great success in conciliating the exasperated planters (see below, Section V, No. 13). In appointing Metcalfe, a political opponent, as Governor-General of Canada, the Ministry were thought on all sides to have made the best possible choice. But he found the rough and ready colonial politicians very different from the cultured Jamaica planters and the courtly Rajahs of the East, and his unimpeachable integrity, conscientious desire to do his duty according to his lights, and heroic fight against disease cannot blind us to the fact that he proved himself quite unsuitable to govern Canada. He died of cancer in England in 1846.

² The Civil Secretary was, in fact, the private secretary to the Governor-General. T. W. C. Murdoch of the Colonial Office had held the post under Sydenham. It was now held by James Macaulay Higginson, a protégé of Metcalfe, who was afterwards Governor of Mauritius.

office being slight, owing to the precariousness of its retention, the hold of her Majesty's Government on the officers employed is far from strong; and as any material change in the system of administration may now be regarded as impracticable, the only mode that occurs to me of counteracting the exclusive subserviency to the Legislative Assembly which prevails, is in creating a new source of ambition, by the grant of personal honors to those who deserve well of her Majesty's Government; and even this remedy, although it would probably be beneficial, I would not undertake to warrant as certain to be effectual.

The system of administration called Responsible Government having been struggled for by one party, and coupled with its own introduction into power, was for some time opposed by the party which was thereby displaced; but having been adopted and acted on by the local representatives of Her Majesty, and sanctioned or permitted by her Majesty's Government, it is now universally received, and the several parties vie with each other in putting on it their own extreme constructions, all tending to establish the supremacy of the Legislative Assembly. While the majority in that body consists of members on whose loyalty and affection reliance can be placed, there will be cordiality, and in many respects sympathy, between the head of the Government and the officers assisting him in the local administration; but whenever it may happen, as no doubt it sometimes will, that the majority in that Assembly follow leaders whose principles, or want of principle, are unworthy of confidence, the dilemma will arise of either admitting such men into confidential offices in her Majesty's service, or of falling into collision with the Legislative Assembly. If the differences between parties regarded only local affairs in which the mother country might have no peculiar interest, the easiest method of administering the Government under existing circumstances would be for the Governor to keep aloof from all connexion with any party, and to receive into his Council the leaders of the majority by whatever party, or combination of parties, it might be formed; but this indifference is scarcely possible to a Governor having any spark of British feeling, when almost all who have British feelings are arrayed on one side, and all who have anti-British feelings on the other. This difference must constitute a permanent difficulty in administering the Government according to that system, which practically confers the choice of the executive officers on a majority in the Legislative Assembly.

It will be seen, from the description of parties which I have submitted, that the two parties in Lower and Upper Canada which I regard as disaffected, have a bitter animosity against me; and if it should ever become necessary to admit these parties again into power, in preference to standing a collision with the Legislative Assembly, a case would arise in which my presence here might be rather pre-

judicial than beneficial, as it would be impossible for me to place the slightest confidence in the leaders of those parties.¹ If any such necessity should occur in my time, it would cause an embarrassment much more serious to me than any difficulty that I have hitherto had to encounter. Whatever my duty might dictate, I trust I should be ready to perform, but I cannot contemplate the possibility of co-operating, with any satisfaction to myself, with men of whom I entertain the opinions that I hold with regard to the leaders of those parties. Such an embarrassment will not be impossible, if any portion of the present majority fall off or become insensible of the necessity of adhering together. It is with a view to avert such a calamity that I consider my continuance at my post to be important at the present period, as a change in the head of the Government might easily lead to the result which I deprecate, and which it will be my study to prevent as long as I see any prospect of success.

It is greatly to be lamented—and this reflection must have often been brought to your Lordship's mind by the contents of many of my despatches—that the attention of the Governor should be so much occupied in considering, not how the Government may be best administered for the benefit of the colony, but how it can possibly be carried on without a collision with the Legislature, which could not fail to be attended with evil consequences. This misapplication of the attention of the Government is, however, an unavoidable consequence of the system of administration which has here been adopted, and which can hardly be altered unless its bad working should eventually convince the province of the impracticability of its continuance. Had the executive branch of the Government been maintained independent of the legislative, all the essential principles of Responsible Government might have been secured by the constant exercise of a due regard to the rights and feelings of the people and the Representative Assembly, without creating those embarrassments which arise exclusively from the assumed dependence of the executive officers on that body—a system of government which, however suitable it may be in an independent State, or in a country where it is qualified by the presence of a Sovereign and a powerful aristocracy, and by many circumstances in correspondence with which it has grown up and been gradually formed, does not appear to be well adapted for a colony or for a country in which those qualifying circumstances do not exist, and in which there has not been that gradual progress which tends to smooth away the difficulties otherwise sure to follow the confounding of the legislative and executive powers, and the inconsistency of the practice with the theory of the constitution.

¹ The 'leaders of those parties' were, of course, Lafontaine and Baldwin.

MINUTE OF STEPHEN (EXTRACT)¹

(C.O. 42/531: P.R.O.)

12 January 1846.

. . . With regard to Instructions to the Gov^r. Gen^l. of Canada for his guidance in the discharge of his duties in that Office I feel a difficulty in submitting to Mr. Gladstone my views because I fear that they may seem not a little crude and tranchant. I will, however, venture to say in general that Canada appears to me to have shaken off or laid aside the Colonial relation to this Country and to have become, in everything but the name, a distinct State, receiving, indeed, its Governor from hence and submitting to our General Laws of Trade and Navigation but otherwise self-governed so completely and so inevitably, as to render almost superfluous and unmeaning any attempt to prescribe to the Governor any line of policy on any internal question whatever. So far as I have any means of knowledge Lord Stanley has been acting during the last Four years on the conviction that he could not, and, I believe, on the principle that he ought not, to fetter the Governor's discretion about anything.

This, I am aware, may sound a very sweeping conclusion, and may seem to enounce a principle hardly compatible with the appropriate functions of the Metropolitan Government. Of the fact, however, that such has been the course of policy, I am so well convinced, and I believe it to have been so unavoidable a course, that it is my own opinion that a Governor of Canada is best instructed by resorting to the common-places which present themselves on such an occasion, and whose best recommendation it is that they convey little or no meaning. A man fit to govern Canada must and will act, as Lord Metcalfe has always done, on his own judgment and responsibility. A man not fit to govern Canada will, I believe, but have that unfitness encreased and rendered the more dangerous if he is hampered by any rules of conduct from this Country to which he may think it his duty to adhere even when adherence to them becomes impossible. There are, at this moment, in Canada almost as many Europeans as there were in the United States when they declared their Independence—a very pregnant fact in many ways.

J. S.

¹ This minute was written on the occasion of the drafting of instructions to Earl Cathcart, Commander-in-Chief in Canada, who remained there as Governor-General until the Oregon boundary dispute had been settled and the danger of war with the United States had passed away. In these instructions Gladstone virtually exhorted the Governor-General to follow in the footsteps of his predecessor, Lord Metcalfe: there was little sign of that readiness to let the colony go its own way which Stephen in effect recommended. It must be borne in mind, however, that Stephen thought Metcalfe in the right, and that Metcalfe before he left Canada had got a majority, though a precarious one, of his way of thinking.

STANLEY TO GEORGE GREY (June 27, 1845)

[EXTRACT]¹*(P. P., 1845, xxxiii.)*

Another subject to which your attention will have to be directed, will be the demand which will probably be made for the extension of Representative Government to New Zealand. By Representative Government, I mean the constitution of an elective assembly, with general powers of legislation for the colony. I should be very glad, if I could think that, in the present condition of the colony, it was practicable to adopt this course, but the objections to it appear to me to be insuperable. The first of these naturally arises from the position of the native inhabitants, whom, I consider, it would be equally impossible to admit to the exercise of the franchise, and unjust to subject to the control of a popularly elected body, not only not representing their interests, but in many respects having interests altogether opposed to theirs. But an additional and very serious difficulty presents itself in the small number and extreme dispersion of the European inhabitants. The distances between the various settlements are so great, and the means of communicating between them are so restricted, that even if it were possible to find in each of them persons properly qualified to represent the interests of their several constituencies, such persons would not have the inclination or the leisure to resort to the capital and abandon their own pursuits, for the length of time which would be requisite for the sitting of the legislature. For these, among other reasons, I think the admission of the representative system is for the present impracticable; and I would, therefore, have you direct your attention and that of the colonists to the formation of local municipal bodies, with considerable powers of taxation for local purposes, and of making the necessary bye-laws, leaving the more general powers of legislation vested in the council as at present constituted. Looking to the peculiar circumstances of New Zealand, I should not object to extend the authority of those local bodies over a considerable district of the surrounding country, of the extent of which you would in each case be the judge, having in view the local circumstances, and especially the facilities of forming the districts so as not to include any large number of

¹ This despatch was the outcome of the great debate in the House of Commons initiated by Charles Buller on June 17, 1845. In that debate Peel had expressed himself in favour of the principle of representative government, though qualifying this with the statement that the best method of introducing the principle was, in his opinion, to give large powers to municipalities. The Colonial Reformers complained at the time that this despatch was much less liberal than Peel had given them reason to expect, and it is significant that the despatches of Gladstone, when he succeeded Stanley after the December crisis, are very different in tone.

natives. Those who might happen to be interspersed with the Europeans in small numbers, would of course be admitted to all the privileges and subject to all the restraints and obligations of the local laws and regulations. On those bodies I think you will find it advisable to throw, as far as possible, the burthen of so much of the expenditure of your government, as can fairly be considered to be of a local character; thus endeavouring to obviate objections which might be raised to the disproportion between the taxation of any particular locality, and the benefit derived to it in the expenditure of the public revenue.

25

NEW ZEALAND GOVERNMENT ACT 1846 [EXTRACT]

(9 & 10 *Vict.*, *cap.* CIII.)

II. Be it enacted, That it shall be lawful for Her Majesty, in and by any Letters Patent hereafter to be issued under the Great Seal of the United Kingdom, from Time to Time to constitute and establish within any District or Districts of the Islands of New Zealand One or more Municipal Corporation or Corporations, and to grant to any such Corporations all or any of the Powers which, in pursuance of the Statutes in that Behalf made and provided, it is competent to Her Majesty to grant to the Inhabitants of any Town or Borough in England and Wales incorporated in virtue of such Statutes, or any of them, and to qualify and restrict the Exercise of any such Powers in such and the same Manner as by the Statutes aforesaid, or any of them. Her Majesty may qualify or restrict the Exercise of any such Powers as aforesaid in England.

III. And be it enacted, That it shall be lawful for Her Majesty, in and by any Letters Patent hereafter to be issued under the Great Seal of the United Kingdom, from Time to Time to divide the said Islands of New Zealand into Two or more separate Provinces, and to constitute and establish within the same Two or more separate Assemblies; (that is to say,) One such Assembly in and for each of such separate Provinces, and that each of the said Assemblies shall consist of and be holden by a Governor, a Legislative Council, and a House of Representatives.

IV. And be it enacted, That each of the said Legislative Councils, when such Legislative Councils shall be constituted, shall consist of such Persons as Her Majesty shall for that Purpose appoint; and that the Members of each of the said Houses of Representatives shall be elected by the respective Mayors, Aldermen, and Common Councils of the Several Municipal Corporations aforesaid, situate within the Limits of the Government for which each of the said Houses of Representatives respectively shall be so elected, and that

such Elections shall take place in such Manner and Form and under such Regulations as shall for that Purpose be prescribed in any such Letters Patent as aforesaid.

V. And be it enacted, That it shall be competent for any such Assembly so to be constituted and established within the Islands of New Zealand, and they are hereby authorized and empowered (save as herein-after is excepted), to make and enact Laws, Statutes, and Ordinances for the Peace, Order, and good Government of such Parts of the said Islands as shall be within the Limits of any separate Province for which any such Assembly shall be so constituted and established as aforesaid, such Laws not being repugnant to the Laws of the United Kingdom aforesaid, or to the Laws of the General Assembly herein-after mentioned.

VI. And be it enacted, That it shall be lawful for Her Majesty, in and by any such Letters Patent as aforesaid, to constitute and establish a General Assembly in and for the Islands of New Zealand, to be called the General Assembly of New Zealand, which said General Assembly shall consist of and be holden by the Governor in Chief of the said Islands, and a Legislative Council, and a House of Representatives; and that the said Legislative Council shall consist of such Persons as Her Majesty shall for that Purpose appoint; and that the said House of Representatives shall consist of Members of the respective Houses of Representatives of the several Provinces into which the said Islands may in manner aforesaid be divided, which Members so to serve in the said General Assembly shall be elected, nominated, and appointed by such Persons, and in such Manner and Form, and upon and subject to such Rules and Conditions, as Her Majesty by any such Letters Patent as aforesaid shall direct.

VII. And be it enacted, That it shall be competent to the said General Assembly of the New Zealand Islands, and they are hereby authorized and empowered, to make and enact such Laws, Statutes, and Ordinances as may be required for all or any of the Purposes after mentioned; (that is to say) first, for the Regulation of all Duties of Customs to be imposed on the Importation or Exportation of any Goods at any Port or Place in the New Zealand Islands: and secondly, for the Establishment of a General Supreme Court, to be a Court of original Jurisdiction or of Appeal from any of the Superior Courts of Any such separate Provinces as aforesaid; and thirdly, for determining the Extent of the Jurisdiction and the Course and Manner of Proceeding of such General Supreme Court; and fourthly, for regulating the current Coin of the said Islands, or the Issue therein of any Bills, Notes, or other Paper Currency; and fifthly, for determining the Weights and Measures to be used therein; and sixthly, for regulating the Post Offices within and the Carriage of Letters between different Parts of the said Islands; and seventhly, for establishing general Laws of Bankruptcy and Insolvency to be in force throughout

the same; and eighthly, for the Erection and Maintenance of Beacons and Lighthouses on the Coasts of the said Islands; and ninthly, for the Imposition of any Dues or other Charges on Shipping at any Port or Harbour within the same.

VIII. And be it enacted, That the Laws so to be enacted as aforesaid, for any of the Purposes aforesaid, by the said General Assembly of the New Zealand Islands, shall control and supersede therein any Laws, Statutes, or Ordinances in anywise repugnant thereto which may be enacted by the Assemblies of any such separate Provinces as aforesaid; and that if any Questions shall arise regarding the Limits of the Authority and Jurisdiction of the said General Assembly of the New Zealand Islands, and the Authority and Jurisdiction of the said other Assemblies, all Courts, Officers of Justice, and others shall conform and give Effect to the Decision of the said General Assembly of the New Zealand Islands on any such Question, until the Decisions thereon of Her Majesty in Council shall have been made known and promulgated within the said Islands, by which Decision any such Questions as aforesaid shall thenceforward be determined within the same. . . .

26

DESPATCH FROM GREY TO POTTINGER

(November 2, 1846) [EXTRACT]¹

(*P. P.*, 1847-8, xliii.)

I turn to a totally different subject, on which I hope to receive the benefit of your advice and assistance so soon as the settlement of the affairs of Kafraria shall have left you leisure for the purpose. I advert to the applications which have been addressed to Her Majesty for the establishment of a Representative form of Government in the colony of the Cape of Good Hope. Her Majesty's Government entertain the strongest prepossessions in favour of that system of colonial polity, and will be prompt to avail themselves of any opportunity of extending it to the British settlements in Southern Africa. Among the papers printed by order of the House of Commons in the last Session of Parliament, was a Return of all applications from the colonists of the Cape of Good Hope for Representative Government, and of the answers thereto. I enclose a copy of that paper. At pp. 4-7 you will

¹ Sir Henry Pottinger had made a reputation in India and added to it by his successful conduct of the political side of the 'opium war' in its later stages. On his return from China he became something of a national hero. He accepted the government of the Cape on the understanding that he might give it up as soon as an opportunity offered of returning to India, and he was in fact less than a year in the colony. His government of Madras (1847-54) was, however, not a success. 'He was,' says the *Dictionary of National Biography*, 'better fitted to deal firmly with a crisis than to conduct ordinary administrative duties.' The remainder of this despatch is to be found in Section VI, A, No. 13.

find a Despatch from Lord Stanley on the subject, expressing a general concurrence in the opinions that the proposed change would be desirable, but pointing out such difficulties as had occurred to him on the subject, and proposing various questions to which he desired an answer. No such answer has ever been received at this Office; and I should wish you, in your consideration of the question, and in your Report on it, to advert attentively to the observations made by Lord Stanley in that Despatch, pointing out how far they may appear to you to admit of a satisfactory answer.

Since the date of Lord Stanley's Despatch a difficulty which then existed in a comparatively slight degree has, I fear, been much enhanced. I refer to the exasperation of the hostile feelings towards each other of the different races by which this part of Africa is inhabited, not only by the contest now in progress, but also by the emigration of the Boers, and their recent attacks on the tribes to the north-eastward of the colony.

Without anticipating the views which you may form in communication with the colonies best qualified to afford you their aid, I for the present confine myself to the statement that, on a question of this nature, some difficulties may be wisely encountered, and some apparent risks well incurred, in reliance on the resources which every civilized society, especially every society of British birth or origin, will always discover within themselves for obviating the dangers incident to measures resting on any broad and solid principle of truth and justice. On such a basis, as I am convinced, rests the policy of intrusting the remote dependencies of a metropolitan state with the largest powers of self-government, in whatever relates to their internal and local affairs. I should therefore not be unwilling or afraid to act on that policy, even though I could not distinctly perceive how some conflicting interests could be adjusted under it, or how perfect arrangements could be made for the prevention of injustice to some members or classes of the colonial society. Of course, however, to whatever extent those inconveniences can be avoided by previous inquiry and foresight, it is our duty to avoid them; and I shall rely on your aid in the discharge of that duty in reference to any representative government which it may be found expedient to establish in the colony of the Cape of Good Hope.

I have, &c.

(signed) GREY.

DESPATCH FROM EARL GREY TO SIR C. FITZROY

(July 31, 1847) [EXTRACTS]¹*(P. P., 1847-8, xlii.)*

The despatch dated the 29th April 1846, No. 90,² and the voluminous annexures attached to it, may be considered as having exhausted the arguments for and against the separation of the Port Phillip district from the rest of the colony of New South Wales, so far as those arguments are drawn from facts or considerations of a local nature. It would be vain to expect from any other body of persons to whom the inquiry could be referred a review of those arguments, more complete, more dispassionate, or conducted with greater ability than is the discussion comprised in the various minutes of the Executive Council of New South Wales of the 1st and 23d April 1846, and in the appendixes subjoined to those minutes. As it would be impossible for me to exhibit a more clear or comprehensive summary of the whole controversy than is to be found in those minutes and appendixes, it will be sufficient for me to state that, adopting in general the reasonings of Sir George Gipps, and of the majority of the Executive Council, Her Majesty's Government have submitted to the Queen their opinion, that Parliament should be recommended to impart to Her Majesty the authority necessary for carrying into effect the practical conclusion of that majority. . . .

Local self-government, if necessary for the good of the whole colony, is not less necessary for the good of the several districts of which it is composed. For this reason it was that Parliament provided for the erection throughout New South Wales of municipal corporations, which should, in various respects, balance and keep in check the powers of the Legislative Council. By this method it was supposed that the more remote districts would be able to exercise their fair share of power, and to enjoy their proper influence in the general polity of the whole province. But the result has disappointed this expectation. The municipalities have only a nominal existence. The Legislative Council has absorbed all the other powers of the

¹ Sir Charles Augustus FitzRoy had been Lieutenant-Governor of Prince Edward Island and Governor of the Leeward Islands before being appointed to New South Wales in 1846. He succeeded very well in conciliating colonial opinion, which had been exasperated by a long contest with Sir George Gipps, but it was generally believed that throughout his Governorship, which lasted until the end of 1854, the power behind the throne was the Colonial Secretary, Deas Thomson (see below, p. 174, note 1).

² The despatch of April 29, 1846, forwarded the opinion of Sir G. Gipps, fortified by those of a majority of the Executive Council, in favour of the separation of Port Phillip from New South Wales: at the same time, as mentioned in this despatch, minutes of dissent were included from the Colonial Treasurer (Mr. Riddell) and Bishop Broughton—first Bishop of Australia and a man of distinguished ability, who was still a member of the Executive Council.

colonial state. The principle of self-government in the districts the most remote from Sydney is therefore acted upon almost as imperfectly as if the conduct of local affairs had remained under the same management and institutions as those which the existing system superseded.

Members, it is true, are chosen to represent those districts in the Legislature; but it is shown that such of the inhabitants of Port Phillip as are really qualified for this trust, are unable to undertake it at the expense of abandoning their residences and their pursuits in the southern division of the colony. Thus the Port Phillip representation has become an unreal and illusory, not a substantial, enjoyment of representative government.

The principle of local self-government (like every other political principle) must, when reduced to practice, be qualified by many other principles which must operate simultaneously with it. To regulate such affairs with reference to any one isolated rule or maxim would, of course, be an idle and an ineffectual attempt; for example, it is necessary that while providing for the local management of local interests, we should not omit to provide for a central management of all such interests as are not local. Thus questions, co-extensive in their bearing with the limits of the empire at large, are the appropriate province of Parliament. But there are questions which, though local as it respects the British possessions in Australia collectively, are not merely local as it respects any one of those possessions; considered as members of the same empire, those colonies have many common interests, the regulation of which in some uniform manner, and by some single authority, may be essential to the welfare of them all. Yet in many cases such interests may be more promptly, effectually, and satisfactorily decided by some authority within Australia itself than by the more remote, the less accessible, and, in truth, the less competent authority of Parliament.

Her Majesty's Government, therefore, hope in the next Session of Parliament to introduce a Bill¹ for the division of New South Wales into two colonies, the northern of which would retain its present name, while the southern colony would, by Her Majesty's gracious permission, receive the name of the Province of Victoria.

The effect of this alteration would be to render inevitable some changes in the existing constitution of the northern government. When detached from the southern districts, the existing system would cease in many respects to be appropriate and applicable to its new condition, and there appear also to be some particulars in which the practical operation of the present constitution proves that it might with advantage be revised. One of the most material of these contemplated changes is that which involves a return to the old form of colonial constitutions. You are aware that in the older British

¹ The Bill was not introduced until 1849. Much had happened before then.

colonies, the legislature, as in New South Wales, is generally composed partly of nominees of the Crown and partly of the representatives of the people; but there is this important difference between the two systems, that in the one case the legislature is divided into two separate houses and chambers, in the other the representatives of the people and the nominees of the Crown form a single body under the title of the Legislative Council. It does not appear to me that the practical working of this last system would by any means justify the conclusion that it is an improvement upon that which it was formerly the practice to adopt; on the contrary, I see many reasons for the belief, that the more ancient system by which every new law was submitted to the separate consideration of two distinct houses, and required their joint consent for its enactment, was the best calculated to ensure judicious and prudent legislation.

Another very important question will arise as to the means which should be taken in order more effectually to provide for the municipal government of the various towns, counties, or other smaller divisions. I have already observed that it was the intention of Parliament, in establishing the existing constitution of New South Wales, to create local authorities of this description; and although that intention has hitherto been defeated, it is not the opinion of Her Majesty's Government that it ought to be abandoned. The experience of our own country, that of the British provinces in North America, and also that of the former British colonies, which now constitute the great republic of the United States, may be said to have conclusively established not merely the great advantages of devolving the management of local affairs upon the inhabitants of districts of moderate size, acting by their representatives, but likewise the converse of this, and that evils of a very serious kind result from committing the exclusive management of the affairs, both general and local, of a whole province, to a central legislature, unaided and unbalanced by any description of local organization. It follows, that in revising the constitution of New South Wales, it will be necessary to consider what changes ought to be made in the existing law for the erection of municipalities, in order to secure to those bodies their just weight and consideration, and especially whether, with that view, they may not bear to the House of Assembly the relation of constituents and representatives.

Some method will also be devised for enabling the various legislatures of the several Australian colonies to co-operate with each other in the enactment of such laws as may be necessary for regulating the interests common to those possessions collectively; such, for example, are the imposition of duties of import and export, the conveyance of letters, and the formation of roads, railways, or other internal communications traversing any two or more of such colonies.¹

¹ These suggested federal arrangements formed the answer of Lord Grey to a

I will not attempt at the present moment to do more than to indicate the general principles on which it is proposed to legislate. The details will be the subject of further and of very attentive consideration.

That part of the plan which respects the creation of a central authority implies the establishment of the system of representative legislation throughout the whole of the Australian colonies, including Van Diemen's Land and South and Western Australia, though in the latter it will probably be thought right to postpone the operation of the change until the colonists shall be prepared to defray the expense of their own civil government without the assistance of an annual Parliamentary grant. . . .

With these general remarks, I must for the present dismiss a subject, the importance of which would merit, and may hereafter receive, a much more copious examination and discussion. What I have written will, however, I trust be sufficient to relieve the anxiety of the public mind in New South Wales respecting arrangements pregnant with results so momentous to that part of Her Majesty's dominions, and therefore so deeply interesting to every other member of the widely extended empire over which Her Majesty reigns. It will be no slight relief to the responsibility of proposing such a change to find myself in possession of the most complete local intelligence, and supported by the opinion of the most eminent local authorities. I need scarcely add that it will be a source of the highest gratification to me if, under the authority of Parliament, the colonial governments of Australia can be settled on a basis on which the colonists may, under the blessing of Divine Providence, themselves erect institutions worthy of the empire to which they belong, and of the people from whom they are descended.

I have, &c.

(signed) GRÉY.

despatch of Sept. 29, 1846, in which Sir C. FitzRoy, prompted by Deas Thomson, drew attention to the advantage of having some unified authority in Australia to deal with tariff legislation. In the controversy caused by some of the other proposals of Lord Grey's despatch his federal scheme was almost entirely lost sight of. (See below, No. 29.)

DESPATCH FROM GEORGE GREY TO EARL GREY
[EXTRACTS]

(*P. P.*, 1847-8, xliii.)

Government House, Auckland,
May 3, 1847.

Since I had the honour of receiving your Lordship's private letter of the 27th November last, transmitting the drafts of the papers relative to the introduction of a new constitution into this Colony, which had been printed for the consideration of Her Majesty's Government, I have felt much concern lest any want of care upon my part in omitting to forward sufficiently detailed information of the circumstances of this portion of the Colony, should have left Her Majesty's Government in ignorance of various points which, I fear, were not under their consideration at the time they determined to introduce immediately into the province of New Ulster¹ a constitution of the nature of that which is proposed. Should I have fallen into this error, the only excuse I have to offer is, that from the tenor of previous despatches from your Lordship's department I did not think that any change would, for some years, be introduced into the form of government of this portion of New Zealand, and I did not imagine that, in the first instance, the form of government now proposed would have been introduced into any part of this Colony.

My reasons for entertaining the apprehensions above stated are, that Her Majesty's Government will, I fear, by introducing the proposed constitution into New Ulster, not do that which, from your Lordship's despatch forwarding the Charter, I understand them to intend to do, but something different from it, and for which I believe (referring to the large number and present state of the native population in this Colony) no precedent has been established, either by Great Britain or by any other country; that is, by the introduction of the proposed constitution into the province of New Ulster, Her Majesty will not confer, as is intended, upon her subjects the inestimable advantages of self-government, but she will give to a small fraction of her subjects of one race the power of governing the large majority of her subjects of a different race. She will not give to her subjects the valuable privilege of appropriating, as they may think proper, the funds raised from themselves by taxation, but she will give to a small minority of one race the power of appropriating as they

¹ New Ulster was the name given to the northern of the two Provinces into which New Zealand was divided by the Act of 1846 (9 & 10 Vict., cap. 103). It comprised the northern half of the North Island, most of the white population being concentrated at Auckland. The other Province, which thus comprised not only the South (or Middle) Island but the northern shores of Cook's Straits, was called New Munster. At times the names had been used to denote the two main islands respectively, but probably by geographers only. After the introduction of the constitution of 1852 (below, No. 45) the names disappeared entirely.

think proper, a large revenue raised by taxation from the great majority of her subjects of another race. And these further difficulties attend this question, that the race which is in the majority is much the most powerful of the two; the people belonging to it are well armed, proud, and independent, and there is no reason that I am acquainted with to think that they would be satisfied with, and submit to, the rule of the minority, whilst there are many reasons to believe that they will resist it to the utmost. And then it must further be remembered that the minority will not have to pay the expenses of the naval and military forces which will be required to compel the stronger and more numerous race to submit to their rule, but that, on the contrary, these expenses must be paid by Great Britain. . . .

Before stating the reasons upon which these views are founded, I think it proper to mention that Her Majesty's native subjects in this country will certainly be exceedingly indignant at finding that they are placed in a position of inferiority to the European population: they will undoubtedly argue, as they now frequently do, that they not only cheerfully ceded the sovereignty of their country to the Queen, but that when attempts have been made by some discontented tribes to throw off the sovereignty of Great Britain, and that at a period when, from the smallness of the British force in the country, they had apparently some hopes of success, the principal chiefs came forward, and freely gave the services of themselves and their people, and shed their blood in assisting to maintain for Her Majesty that sovereignty, which they had yielded to her. Whilst, on the contrary, they would justly regard the mass of the European population of this portion of the Colony, as having been attracted here solely by motives of personal benefit, such as a desire of carrying on trade with the numerous native population; or of benefiting by the expenditure of the Parliamentary Grant in aid of the civil government, or by the naval and military expenditure.

In illustrating the reasons which have induced me to form the opinions I have stated, I will take the population returns, published by my predecessor, for the year 1845. No great change has taken place in either the European or native population since that period; in fact, the distresses of the country induced many European settlers to quit the Colony, and no corresponding immigration has taken place; with the exception therefore of the troops and naval force which have been brought into the country, the European population does not much exceed in amount that which it was in 1845, although some changes may have taken place in the relative population of the British settlements from persons having repaired from one settlement to another. And as Auckland has been, as the seat of government, the chief point of attraction, the population of that place, exclusive of the military, may perhaps be stated at nearly 4,000 souls. In 1845 the European population of the territory, which would form the proposed province

of New Ulster, was about 4,500 souls. . . . But in point of fact, from circumstances connected with the position of the other settlements, the only persons who would have any real share in the proposed constitution would be the settlers in the neighbourhood of Auckland.

The returns of native population published at the same time would give, for the probable native population inhabiting the proposed Colony of New Ulster, about 100,000 souls; the whole of whom would be excluded from all share whatever in the representation of the country by the proposed proviso in the instructions, 'that no person should be capable of exercising the elective franchise who cannot read and write the English language.*' At the same time, under the present system of taxation, the large native population (which even if it has been over-estimated by Mr. Clarke¹ at 100,000, and is taken at only 60,000, although I believe this latter supposition is below the true amount, still forms the vast majority of the population) contributes largely to the revenue, and each year, as they continue to advance in civilization, will contribute still more largely to it, so that the proportion paid by the European population, will form but a small part of the whole revenue.

Then it must be borne in mind that the great majority of the native population can read and write their own language fluently; that they are a people quite equal in natural sense and ability to the mass of the European population;† that they are jealous and suspicious; that they now own many vessels, horses, and cattle; that they have in some instances considerable sums of money at their disposal, and are altogether possessed of a great amount of wealth and property in the country, of the value of which they are fully aware; that there is no nation in the world more sensitive upon the subject of money matters, or the disposal of their property; and no people, that I am acquainted with, less likely to sit down quietly under what they may regard as injustice.

A great change has also taken place in their position, the mutual jealousies and animosities of the tribes have greatly disappeared, and a feeling of class or race is rapidly springing up, and has been greatly fomented by the efforts which have been made by designing Europeans to obtain their lands from them for a merely nominal consideration. This feeling of nationality has been extended by many other causes. Some of their young chiefs of the highest birth, and of great personal ambition, have now received good educations;

* [I do not know one native who can read and write the English language.]

† [Out of 67 natives who have been employed by the Ordnance Department, 66 can write their own language, and the whole of them can read it.]

¹ Mr. Clarke, Chief Protector of Aborigines, was generally considered to have been the real ruler of New Zealand, at any rate in native questions, during the Governorship of FitzRoy. Grey dispensed with his services soon after his arrival.

the habit they have acquired of letter writing, which is a favourite custom with them, affords chiefs inhabiting the most distant portions of the island the means of frequent and rapid communication with each other. The decay of their mutual jealousies has rendered it safe for the natives to travel into all portions of the island, and some of them are in a constant state of movement; so that their intercourse and power of forming extensive conspiracies, and of executing combined and simultaneous movements upon different points is daily increasing. . . .

It is, I think, doubtful, therefore, if it would be prudent to hazard the attempt to force upon a nation so circumstanced a form of government which would at the same time irritate their feelings, and, I think, insult their pride, and which, there can be no doubt, would separate them from the Europeans, placing them in an inferior position as a race, and thus at once create this feeling of nationality, the consequence of which would, I fear, be so hurtful. . . .

I beg further to point out, that although I entirely concur in the advisability of compelling the natives, as soon as possible, to learn to read and write the English language, and will omit no means within my power of promoting these benevolent intentions of your Lordship; yet that I think that, with a view of promoting this object, a necessary preliminary to giving such extensive powers over the funds raised by the taxation of a large native population into the hands of the representatives of so small a British population, would be to require by law, that a certain sum should annually be devoted to the maintenance of schools, for the instruction of the native population in the English language, and that some extensive system of national education should be introduced before the new constitution is brought into operation; the permanency of which system should be secured by such a provision as I have above mentioned.

The foregoing arguments have been applied solely to the great native population throughout the country, and to the general revenue raised from duties of customs; but they apply equally, perhaps even with more force, to the natives who would reside within the limits of boroughs, and who would be subjected to direct taxation in the form of assessments, &c.; which I fear might often be collected in a manner highly offensive to them, and who would speedily become discontented and exasperated if they had no voice upon the subject. The same arguments apply also equally to the naturalized Germans, who are likely to become a very numerous and important portion of the population, and who are at present contented and good citizens, whom I should be very sorry to see excluded from any privileges accorded to the rest of Her Majesty's subjects; whilst the inhabitants of the French colony at Akaroa¹ who Her Majesty's Government have

¹ The French settlement at Akaroa was a very small one established by the 'Nanto-Bordelaise Company' in 1840 on land purchased from the Maoris in 1838. Captain Lavaud, who had been sent to assist the settlement with his frigate, made no

directed to be naturalized, will, in like manner, be wholly excluded from any share in the management of their own affairs, and will be placed in a position of inferiority in reference to the rest of Her Majesty's subjects.

I think it right to mention to your Lordship, that even in the southern portion of this island I did not contemplate immediately so extensive a change in the constitution of the colony. I thought that a council, in which the Governor presided, and which was composed of official and un-official members, the un-official members being elected by the inhabitants of the colony, would, viewing the peculiar circumstances of the colony of New Zealand, particularly in reference to the native population, have been that form of government which, for the present, was best suited to the wants of the people; whilst I do not think it would have been, in any respect, repugnant to their feelings. This form of government would also, so soon as the land questions have been adjusted, suit the circumstances of Auckland; particularly if the Governor were empowered, from time to time, to name certain natives who should have the privilege of voting at the elections for the return of representatives.

Whatever form of government it may, however, be determined ultimately to bestow upon the northern colony of New Zealand, I beg to suggest that it would be desirable in the first place that it should not be such as to render it doubtful whether the large native population will submit to it; and secondly, that so long as the Governor has so formidable and numerous a race to control, it is necessary not only that he should have the power by his negative of preventing any measures being passed which might result in rebellion, but that he also requires to be in possession of the active power of carrying such measures as are essential for the welfare and pacification of the native race. For your Lordship will see that, under the proposed constitution, any refusal of the Governor to comply with, perhaps, very impolitic demands of the Lower Chamber may involve a stoppage of the machine of government, which will entail much evil not only upon those who return the representatives, but upon the large body of natives who will be wholly unrepresented.

At present, the natives are quite satisfied with the form of government now existing, and as the chiefs have always ready access to the Governor, and their representations are carefully heard and considered, they have practically a voice in the government and of this they are well aware; but under the proposed constitution they would lose their power, and the Governor would lose his influence over them: in fact, the position of the two races would become wholly altered, and the Governor would, I fear, lose that power which I do not see how he can well dispense with in a country circumstanced as this.

attempt to dispute British sovereignty; and no further parties of emigrants were sent. The settlers never numbered more than about 200.

The natives are, at present, certainly not fitted to take a share in a representative form of government; but each year they will become more fitted to do so, and each year the numerical difference between the two races will become less striking; so that a great advantage would be gained by delaying even for a few years the introduction of the proposed constitution into the northern parts of New Zealand.

The concluding passage of the Despatch which your Lordship proposes to address to me, leaves to my own discretion, the power of fixing the time at which I should promulgate the new charter, with, however, so distinct an intimation of Her Majesty's pleasure that no unnecessary delay should take place in my doing so, that I think it better to promulgate it with as little delay as possible, after its arrival in this country; but that portion of the instructions which relates to the introduction of representative institutions into the country, cannot, under any circumstances, be carried into effect for nearly 12 months from this date, upon account of the numerous preparatory steps, which, in the terms of the instructions, must first be taken. And, as I am apprehensive that any attempt to introduce such a form of government, as that proposed, into this portion of the colony, would shortly give rise to renewed rebellion, I shall, under all circumstances, deem it my duty to refrain from giving effect, in the northern portion of New Zealand, to that portion of the proposed instructions, until I receive your Lordship's reply to this Despatch. In the meantime, however, all the other portions of my instructions shall be carried out as rapidly as possible, and no care nor exertions upon my part shall be wanting to render them as beneficial to the inhabitants of this country as your Lordship desires them to be. Whilst the delay in the introduction of representative institutions for a few months will at all events so strengthen the position of the British in this country, that if Her Majesty's Government should, with the information contained in this Despatch before them, still deem the introduction of the new constitution into the province of New Ulster indispensable, less probability will exist of extensive injury to British interests, resulting from any discontent upon the part of the natives. All my own experience in this country leads me, however, earnestly to request your Lordship to advise Her Majesty for the present to revoke that portion of the charter which contemplates the introduction of the proposed form of representative institutions into the province of New Ulster.¹

I have, &c.,

(signed) G. GREY.

¹ The suspension of those parts of the constitution relating to representative government was effected by the Act 10 & 11 Vict., cap. 5. The duration of this Act was to be five years. It applied to the whole colony, and not to New Munster only, as the Imperial Government thought it inadvisable to have different forms of government in operation in different parts of the same colony.

PETITION OF COLONISTS OF NEW SOUTH WALES
TO THE QUEEN (February 1848)

(*P. P.*, 1847-8, xlii.)

TO the QUEEN'S MOST Excellent Majesty.

The humble Petition of the undersigned Colonists of New
South Wales,

Respectfully sheweth,

That the publication of a despatch, dated the 31st July 1847, from Your Majesty's principal Secretary of State for the colonies, indicating a change in the constitution of this colony, by which (among other things) the system of district councils is to be perpetuated, and the Legislative Assembly is to be placed, with respect to those district councils, in the relation of representative and constituent, has filled us with the utmost apprehension and dismay.

That in consequence of the dispersion of a large portion of the inhabitants of this colony, any measure establishing municipalities, similar in principle to the district councils attempted to be created by the Act of Parliament 5 & 6 Vict. c. 76, would be so repugnant to the wishes, and so adverse to the interests of this community, that it is utterly impossible that it could ever be brought into effective operation.

That the change in the constitution of this colony, proposed in the before-mentioned despatch, would have the effect of depriving us of the elective franchise, which we maintain to be our inalienable right as British subjects.

That we cannot but be persuaded, that by delegating our right to elect our representatives, we are deprived not only of that choice to which we are entitled, but also of that constitutional control over our Legislature without which no people can be considered free.

That we are anxious to enjoy a form of government founded, as nearly as circumstances will admit, upon the principles of the British constitution, and that the making this colony the subject of a theoretical experiment in legislation, is a measure the justice or policy of which we can never admit.

That we see nothing in the erection of Port Phillip into a separate colony to justify the extraordinary change which is, by the before-mentioned despatch, proposed to be made in the constitution of the colony.

That we feel ourselves entitled to expect, that no important alteration in that constitution shall be made without the previous consent of those whose persons and property it may be intended to affect.

Your petitioners therefore humbly pray, that Your Most Gracious Majesty will not assent to any change in the constitution of this colony which shall not have received the previous sanction of the colonists at large, and your petitioners will ever pray, &c.

DESPATCH FROM EARL GREY TO SIR C. FITZROY
[EXTRACTS]

(*P. P.*, 1847-8, xlii.)

SIR,

Downing-street, 31 July 1848.

1. I have to acknowledge your Despatch, No. 3, of the 6th January last, in which you report the steps which you had taken to collect the opinions of the community over which you preside, in relation to the measures proposed by me in my Despatch of 31 July 1847, and also No. 31 of the 2d February last, enclosing a petition from a large number of the householders and inhabitants of Sydney and its vicinity, deprecating any change in the constitution of the colony which shall not have received the previous sanction of the colonists at large. . . .

4. I collect from the documents now before me, that the objections most strongly felt throughout the colony to the views propounded in my despatch, relate to the project of making the District Councils serve as constituent bodies to the Legislature; and, though in a less degree, to the division of the Legislature into an Assembly and a Council, according to the ordinary pattern of the governments of those colonies which derive their free institutions from Great Britain.

5. With regard to the first of these suggestions, I certainly continue to believe, that in colonies possessing an extensive territory it is highly desirable that the purely local affairs of different districts should be entrusted to the management of some local authority distinct from the general legislature, and that the surest method of preventing a conflict between such authority and the legislature, is to make the latter emanate from the former; but I can have no wish to impose upon the inhabitants of the colony a form of government not in their judgment suited to their wants, and to which they generally object, and shall therefore not think it necessary to advise the carrying of this proposal into execution.

6. With regard to the division of the legislature into Assembly and Council, your own opinion, founded, as you state, on long practical experience, that it would be a decided improvement upon the present form of the legislature in New South Wales, is one to which I have already stated my own adherence. Had, therefore, the general feeling of the colony responded in any degree to the views expressed by myself, I should have had no hesitation in advising Her Majesty's Government to lay before Parliament the measures necessary to accomplish the change. But it is not such a reform as I consider it to be at all incumbent on the Legislature at home to press on an unwilling, or even an indifferent people. Their interests will, I think,

be better served by leaving in their own hands the power of effecting it, whenever they shall see reason to do so; nor am I insensible to the difficulty which might be found to exist, if not in the northern districts, at least in Port Phillip, in finding at first a sufficient number of persons, unconnected with Government, qualified and willing to act as nominated members of a separate Legislative Council.¹

7. Having premised thus much in answer to the observations contained in your Despatch and its Enclosures, I will proceed to state the measure which Her Majesty's Government have it in contemplation to introduce into Parliament, in order to effect at once the separation of Port Phillip from New South Wales, and certain ulterior objects which will be explained in the course of this despatch.

8. The Bill for this purpose will, in the first place, effect no change in the composition or authority of the Legislative Council of New South Wales, beyond such as are the necessary consequences of the separation.

9. It will also establish in Port Phillip a Legislature, similar in character to that which now exists in New South Wales.

10. It further appears to me advisable that the same Bill should contain provisions for the establishment of representative institutions in the colonies of Van Diemen's Land and South Australia. In the former the numbers of the convict population, and the strict discipline which it was necessary in consequence to maintain, have hitherto been regarded as presenting obstacles to the adoption of any system of self-government; but it now appears to me that such a measure ought no longer on this account to be delayed. In South Australia no such obstacles have ever existed, and the rapid advance of its population in numbers and in wealth and intelligence appears to indicate that the time has fully arrived when that province should take its place among the self-governing colonies of the British empire. I propose, therefore, that in both these colonies the principle of popular representation should be introduced, and that this should be effected by adding to their existing legislatures elective members bearing the same proportion to those nominated by the Crown, as in New South Wales. But as this form of Government, while upon the whole it may be the best adapted to present circumstances, is one which may admit of much modification and improvement under the suggestions of experience, and as the Australian communities are, in my opinion, fully competent to originate and to discuss for themselves any changes in this portion of their institutions, I have it further in contemplation to recommend that their respective Legisla-

¹ Lord Grey became more and more convinced as time went on that a double chamber was not necessarily the form of Legislature best fitted to a Colonial Government. 'There used,' says Bagehot, 'to be a singular idea that two chambers—a revising chamber and a suggesting chamber—were essential to a free government. The first person who threw a hard stone—an effectually hitting stone—against the theory was . . . the present Lord Grey' (*The English Constitution*, p. 183).

tive Councils should have power to make such alterations in their own institutions as they may think expedient; subject, however, to the condition that no Ordinance which any such Legislative Council may pass for this purpose shall come into force until it shall have been specially confirmed by the Queen in Council, after being laid for one month before both Houses of Parliament. By this arrangement provision will, I trust, be made for accommodating the constitutions of these thriving colonies to the wants and the wishes of their inhabitants, while at the same time the necessary security will be taken against the introduction of rash and ill-considered changes.

11. There is another subject to which, in making the proposed arrangement, it will be necessary to advert. The communication by land between the districts of New South Wales and Port Phillip is already completely established; that of the latter, with South Australia, is becoming not inconsiderable; and, in the rapid progress of events in those advancing communities, the intercourse between them will yearly become more and more intimate and frequent. If, therefore, these three portions of the mainland of Australia should be placed under distinct and altogether independent legislatures, each exerting absolute authority as to the imposition of duties on goods imported, the almost inevitable result will be that such differences will grow up between the tariffs of the several colonies, as will render it necessary to establish lines of internal custom-houses on the frontiers of each. The extreme inconvenience and loss which each community would sustain from such measures needs no explanation; it will therefore be absolutely necessary to adopt some means of providing for that uniformity in their commercial policy which is necessary, in order to give free scope for the development of their great natural resources, and for the increase of their trade. In what manner this may best be accomplished is a question of some difficulty, which I must reserve for more mature consideration.

12. I regret the delay which has occurred (although from causes independent of Her Majesty's Government), in carrying into effect this necessary and urgently required measure; but the time lost will not be regretted, if the consequence of that delay should be the framing of a measure more complete in all its parts, and more in accordance with the now ascertained views of the Australian community, than could have been the case if legislation had been attempted during the present Session of Parliament.¹

I have, &c.

(signed) GREY.

¹ This despatch was often referred to as the 'golden despatch'—though in fact it only explicitly repeated what the despatch of July 31, 1847, had implied, that the colonists were to have a voice in the determination of their future form of government (see above, No. 27).

LETTER FROM GREY TO ELGIN [EXTRACT]

*(Elgin-Grey Correspondence: Canadian Archives.)**Private.*

Belgrave Square

Feby. 22. 48

MY DEAR ELGIN,

I received by the last mail your letter of the 22nd Jany. with the intelligence of the impending change in your Council.¹ I confess I look to the effects of that change with no little anxiety, but I entirely concur with you as to the principles on wh. your course in these circumstances must be guided—I can have no doubt that you must accept such a Council as the newly elected Parlt. will support, & that however unwise as relates to the real interests of Canada their measures may be, they must be acquiesced in, until it shall pretty clearly appear that public opinion will support a resistance to them—There is no middle course between this line of policy, & that wh. involves in the last resort an appeal to Parlt. to over-rule the wishes of the Canadians, & this I agree with both Gladstone & Stanley in thinking impracticable—If we over-rule the Local Legislature we must be prepared to support our authority by force, & in the present state of the world² & of Canada, he must in my opinion be an insane politician who wd. think of doing so—It does not however follow that you are by any means powerless; if your advisers insist upon an improper course of proceeding the line to take is freely to place before them the objections of it, but to yield if they insist up to the point when they have put themselves so clearly in the wrong that public opinion will support you in resistance, taking the greatest care to carry concession to them as far as possible (on the principle of giving them rope enough to hang themselves) & to have their advice & your objections to it always recorded in writing upon subjects on wh. you differ, so that if at last you come to a rupture there may be no doubt as to the grounds for it.—I cannot help believing that the advantages of the present connection are so entirely on the side of Canada that by following this course you will be supported in resisting everything to wh. you cannot consent with honor & consistently with the real interests of this country.—If not I do not see how separation can be prevented.—I cannot however as yet see any ground for despairing of your getting on reasonably well with the new council you may form, even if that council shd. of necessity include Papineau himself to wh. in spite of his manifesto I shd. not object if his being included in the arrangement shd. be insisted upon the leaders of a party wh. can

¹ The changes impending in the Executive Council of Canada were due to the defeat of the Conservatives in the elections held in January 1848.

² By this time the revolution in Naples had already begun, and the first rumblings of the February Revolution in France had reached England. There is possibly also a reference to the likelihood of American intervention.

command a Majority.¹—Your influence with the Members of your Ministry wh. will be founded on the conviction (I trust generally entertained) that you are no partizan of their opponents, & have no other object but to promote the true interest of the Province will I trust enable you to restrain them from any really objectionable measures. . . .

(signed) GREY.

32

MEMORANDUM OF MONTAGU (April 10, 1848)

[EXTRACTS]²

(*P. P.*, 1850, xxxviii.)

With these remarks on the physical difficulties to be encountered in forming a representative government, with the seat of Legislature in Cape Town, I proceed to consider that of a moral kind, which Lord Stanley apprehends so likely to arise in the exercise of free institutions, out of the diversity of races, origin, and language, so characteristic of this colony. As it regards the difficulties here referred to, diversity of race in this colony is synonymous with that of colour, and it is not to be denied that though this distinction has ceased to be the badge of civil disabilities and moral wrongs, yet it must be owned that it still forms a bar to social intercourse and intimate relations, far more formidable than any arising either from diversity of origin, language, or religion.

But I am not prepared to say that other evils would arise out of, or that these would be aggravated by, the exercise of free institutions, provided, as the Attorney-General³ very properly remarks, the elective franchise be based on such a moderate qualification as will enable the intelligent and industrious man of colour to share with his fellow colonists of European descent in the privilege of voting for the representatives of the people. It is true the coloured race form, to a large extent, the operative class in this colony, but I do not apprehend

¹ It was some time before it was realized in England that Papineau and Lafontaine had finally parted company and that Papineau was not destined to regain his former ascendancy.

² These extracts are from the most remarkable of the numerous minutes of officials and judges, enclosed in Sir Harry Smith's despatch of July 29, 1848, upon this question: they fill altogether about forty pages of the *Parliamentary Papers*. John Montagu, Colonial Secretary of the Cape from 1843 to 1853, was a nephew of Sir George Arthur (see below, Section III, No. 2), who had appointed him Colonial Secretary of Van Diemen's Land. A dispute with Arthur's successor, Sir John Franklin, led to his dismissal; but the Colonial Office made use of his great abilities in another sphere. No less an authority than Stephen regarded him as the real governor of the Cape under the régime of Sir Peregrine Maitland (1844-6). Though upright and conscientious, he was of an imperious disposition and there was little love lost between him and the Cape colonists: and his views on representative government were rather less liberal in later years than those expressed in this minute.

³ The Attorney-General, William Porter, was also an able man, of liberal opinions, and as popular with the colonists as Montagu was unpopular. He held the office from 1839 to 1865.

that, under the plea of determining the relation between master and servant, or of regulating by law the relations between labour and capital in this colony, any attempt would now be made to indulge in antipathies, or gratify prejudices arising out of this obnoxious distinction.

But on this head the practical result of the exercise of municipal Government will best enable his Excellency to form a sound and intelligent opinion. By the Ordinance, No. I., of 1840, which creates Cape Town a municipality, and appoints commissioners and wardmasters to be elected by the resident householders for its future government, the Board of Commissioners is invested with large powers both to direct and control. With the concurrence of the Executive Government, bye-laws may be passed for every purpose of general utility which shall appear to require such regulations within the municipality; yet it is well known that though in the time of slavery there were stringent regulations which had exclusive reference to the coloured class of inhabitants, no attempt has ever been made, or even the faintest wish expressed, by this popularly elected Board to revive the obnoxious regulations of former times, or to pay any regard to a man's colour in the exercise of their authority.

I would also bring to notice another fact illustrative of the social position of the coloured class, at least in the metropolis. Under the Ordinance referred to, the municipal franchise is conferred on all resident householders who are either proprietors or occupiers of premises yielding an annual rent of 10*l.* and upwards. This qualification embraces a very considerable number of coloured persons, both as occupiers and proprietors; nor is the privilege disregarded. In the election both of commissioners and wardmasters they exhibit an interest equal, I should say, to that of their fellow electors, and though none of the wards are exclusively occupied by this class of men, there has been an instance in which a Malay, a man of colour, was elected wardmaster, an office somewhat analogous to that of town councillor in English boroughs; and though he finally declined to serve, yet there was no expression of surprise or displeasure manifested on the occasion. In fact, so little notice did it excite, that it was by mere accident I gained the information.

In regard to diversity of origin, referred to in Lord Stanley's Despatch, it alludes I presume, to the inhabitants of European birth or origin.

These, though in fact belonging to various nations, are generally known by the distinctive titles of English and Dutch, under either of which will be found, however, a very considerable number of Germans, who, of all others, resemble the English most in persevering industry, intelligence and enterprize. That in point of numbers the English form a minority under this distinction is most true, and it is

equally true with the exception of Albany¹ (the greater part of which is exclusively occupied by English settlers) that the English reside chiefly in the towns, villages, and seaports. It is conceded on all hands, that in the management of public affairs as well as in their individual pursuits, they exhibit, as a body, a more independent bearing, are more intelligent, expert, and persevering. But as a body they are by no means the more wealthy of the two. Among the Dutch are to be found the largest capitalists in the colony, and the most extensive owners of landed property and stock.

But the object of referring to this classification of the European colonists, on the part of his Lordship, is to obtain a reply to the following enquiry; Will the English minority, which he assumes to be the more wealthy, intelligent, and enterprising, be content to find themselves overborne by a Dutch majority inferior in all respects except in numerical strength, or should the minority by any cause, come to have a preponderating influence in the Assembly, will there not be serious risk of extensive popular discontent? Here, again, I am of opinion that with the exception of the law of inheritance and succession in this colony, to which the Dutch are exceedingly attached, and the English equally averse, there is not a single subject within the legitimate province of legislative interference, on which national prejudices or the conflicting interests of race are likely to be engendered. In Lower Canada, where this distinction has led to the most calamitous results, there are elements of discord and national antipathy of a far more extensive and deep rooted character than any that are to be found in operation here. Among these may be enumerated the system of Seigniorage, as it existed in France, in the 17th century; the occupation of land in feudal tenure, and the dissociating effect of cultivating apart two distinct languages in their schools, where the presence of the one was an insuperable bar to the introduction of the other.

In this colony, the system of land tenure is as congenial to the habits and feelings of the Englishman as to the African born colonist of Dutch extraction. All lands are held directly from the Crown, either in freehold or perpetual quitrent; they can be sold, transferred, and registered with the greatest facility and promptitude, while mortgages, liens and other obligatory instruments either on fixed or personal property, are duly recorded and the record accessible to any one for the trifling fee of one shilling, and as to a community of language, which of all instruments is the most powerful in amalgamating races of men, and inducing a community of thought, habit, and sentiment, there exists no prejudice against the English, the universal language of the empire, but the contrary. Whilst both languages,

¹ It was to the district of Albany, of which Grahamstown was the capital, that the State-aided emigration of 1819—the first substantial influx of Englishmen into the Cape Colony—had proceeded.

when it is necessary, are taught simultaneously both in private schools and those supported at the public expence. . . .

I have long held the opinion that there are two forms, and only two in which good government can be exercised in our colonial communities, whether heterogeneous in their constituent elements, or existing under the closest ties and strongest sympathies that sameness in origin and similarity of birth, language, and customs can produce. The one is, that of absolute government conducted by a Governor and Council composed of responsible public functionaries: the other is that of a representative government, as closely assimilated to the free institutions of the parent state as the relation and condition of a dependency in regard to that state, is capable of sustaining.

As there is no safe halting between two opinions, so, to my mind, there is none, either permanent or satisfactory, between these two forms of the government of a dependency. No 'juste milieu' that does not, on the one hand, create disappointment and dissatisfaction in the mind of the public, or, on the other hand, grant to an unchecked and irresponsible popular power, an ascendancy dangerous to the interests of society; a power to which the executive becomes a mere passive instrument for the carrying out of its decisions, which are more frequently the result of transient feelings, than of calm and dispassionate deliberation.

It has been the practice in later times to adopt, as it were, intermediate systems in passing from the absolute to the representative form.

The first step in this transition process is the appointment of a Legislative Council composed in part of unofficial members nominated by the Crown. The next is a Legislative Council, of a somewhat popular form, which consists, to a certain extent, of the representatives of the people, mixed up with others holding their seats either during life or the tenure of some official situation, all seated at the same council table, but obviously under very different auspices and directly conflicting influences.

With regard to the first of these modified forms, it has undoubtedly proved a failure in this colony, as well as others, in so far as public opinion and confidence are concerned, and the loss of moral influence, on the part of the Government, which it has necessarily occasioned.

In respect to the other it has seldom failed, unless seasonably abandoned, to produce the evils to which I have referred. In New South Wales it has, according to Earl Grey, proved as barren of good fruit as in former times it was productive of anarchy, discord, and civil dissension, when the celebrated Locke framed for the Carolinas a constitution and body of laws based on this anomalous principle.¹

¹ The reference is to the 'Fundamental Constitutions' drawn up by John Locke in 1669 for the government of the Carolinas: through his connexion with Lord

Regarding therefore, as I do, the Legislative Council, constituted on either of these principles, as an undesirable and unsatisfactory form of colonial polity, it may be expected of me to state which of the two, the absolute form to which I have referred, or the representative, is to my mind the best suited to the present state of the colony. For this, however, there is no occasion, for the choice between the two no longer exists.

One step has already been made towards free institutions in creating corporate bodies for local government, and in granting a Legislative Council, to which men have been invited, from among the people, to take a share in the legislature of the colony, unencumbered by official responsibility and restraint. To recede from this position and fall back upon a Governor and Council, can never be done with safety or wisdom unless compelled by a course of events which I never contemplate: and to remain stationary, heedless of public opinion so widely expressed in both provinces of this colony, would be equally impolitic and unwise. My opinion, therefore, is, that whatever are the drawbacks to the beneficial working of a constitutional government from the moral and physical difficulties alluded to by Lord Stanley, or from others which refer more especially to a large portion of the rural population, a representative government should be conceded, and in a spirit showing that it has not been conferred by a reluctant hand.

In concluding this memorandum, I cannot refrain from expressing my doubts as to the likelihood of eliciting good government for some time, at least, from the exercise of representative institutions. To a greatly preponderating majority of the colonial population, such institutions are entirely unknown, and probably will be regarded an innovation. Like the jury system, it will, if efficiently worked, impose on many, from the character of the country and scattered state of its rural population, duties which cannot fail to be attended with considerable personal sacrifice and inconvenience, and from which, until better able to estimate its value and advantages, they may seek to be relieved, as in the case of jury service. Moreover, I cannot conceal from myself the fact, that few communities, from the isolated condition, the habits, and employments of a large amount of its members, are less qualified to act beneficially upon the government and legislature by the influence of an enlightened public opinion. In rural districts, where weeks, and sometimes months, transpire before a single newspaper is seen, and where social intercourse is confined to the visits of the immediate neighbourhood—where the same

Ashley, he had become Secretary to the Lords Proprietors: it was of course many years before he achieved fame as a philosopher. The constitutions were never really in operation although it was many years before they were officially abandoned. The Parliament for which they provided consisted partly of the proprietors or their deputies and the hereditary aristocracy of landgraves and caciques, and partly of members elected by the freeholders.

routine of employment has existed, without change or improvement, generation after generation, viz. the rearing of herds of black cattle or flocks of sheep, where the occasional visit of a pastor is the only means of leading the mind beyond the common-place thoughts of a pastoral life—nothing but apathy can prevail in regard to interests not purely personal, until education has reached their scattered abodes, and raised them from this state of listless ignorance and mental lethargy, hitherto inseparable from their condition, and in some measure prepared them to share the management of the affairs of their country. I do not, however, think that this should be made a bar to the introduction of a constitutional government, nor a reason for halting in our present position. On the contrary, the sooner free institutions are established, both municipal and legislative, the sooner will the rural population, by the mere exercise of their privileges, be trained to a willing and intelligent discharge of the duties which are thereby imposed upon them. The Dutch population have cheerfully incurred the expense and inconvenience of sharing in the management of the affairs of their church, and, I doubt not, that time will create a similar interest in the constitutional government of their country—the English regard it as their birthright.

(signed) JOHN MONTAGU.

33

DESPATCH FROM GREY TO WALKER (September 1, 1848) [EXTRACT]¹

(*P. P.*, 1849, xxxvii.)

If the Combined Court² should indeed subject the colony to the injuries and hazards resulting from a stoppage of the supplies, no further proof can be wanting that the constitution of the colony, or rather the political arrangement agreed upon for the term of the Civil List Ordinance³ is inconsistent with its welfare, or even with

¹ William Walker was Government Secretary of British Guiana from 1847 to 1866. He was at the time acting as Lieutenant-Governor, as he did on more than one other occasion.

² The Legislature of British Guiana consisted of a Court of Policy, composed of the Governor and four other officials and five indirectly elected unofficial members, and of the so-called 'Combined Court'. In this body, which dealt primarily with the raising of taxes, the Governor did not sit, but the rest of the Court of Policy were members, and with them were conjoined six Financial Representatives elected on a narrow franchise. Unlike the Court of Policy it dated only from 1796, but under the terms of the capitulation of 1803 the colonists retained the privileges they then possessed. In 1841, as part of a Civil List arrangement, the Combined Court had been given power, during the continuance of the Civil List, to discuss the estimates. This constitution is still in existence with some few modifications, though its assimilation to the constitutions of other Crown colonies is now being considered.

³ The Civil List had been voted in 1841 for seven years, but the term had since been extended and it was not due to expire until 1854.

its safety; and such alterations must then be made in the colonial polity as may tend to secure the colony against the recurrence of similar calamities. The stoppage of the supplies would, indeed, by putting an end to the Civil List, involve the termination of the political arrangement which was to determine simultaneously with it; and, by law, the colony would revert to its old constitution, by which the functions of the Combined Court were limited to fixing the particular taxes to provide for an amount of revenue previously fixed by the Court of Policy. But Her Majesty's Government have no desire or intention to re-establish this form of government without essential modifications. It is no doubt the form in which the power of the Crown would be the least under local restraint. But it is far indeed from the desire, and it is equally far from the interest of Her Majesty's Government to exercise in British Guiana, or any other colony, any power which they can properly avoid to exercise. In these times, it is for the interest of every government, and especially conducive to their ease and relief, to devolve responsibility upon local legislatures wheresoever there can be found any considerable body of the colonists capable of forming a constituency, and controlling the conduct of their representatives. If Her Majesty's Government forbears, in any case, to delegate the uncontrolled management of the affairs of a colony to local bodies, it is from the fear that it might thereby fail to acquit itself of the duty which it owes to the colonial community at large, and especially to those classes of its inhabitants which, from want of instruction, are incapable of securing for themselves, by the intelligent exercise of political franchises, a real representation of their interests in the colonial legislatures. When persons possessing education and intelligence sufficient for the due exercise of political power form only a very small minority of the whole population, if the uninstructed classes are not permitted to exercise the franchise, and if their interests are at the same time deprived of the guardianship of the Crown, there must be great danger of the malversations, oppressions and abuses which are notoriously incident to the exercise of supreme power by irresponsible and oligarchical bodies. If they are permitted to exercise the franchise, from their numbers they must obtain a predominating power; and there is a possibility from their ignorance and want of appreciation of the objects and institutions of civilized life, that those objects, and property and life itself, may be endangered. To avoid these risks on both sides, and at the same time to secure to an uninstructed population some of the benefits of representative government, it might seem peculiarly fitting that the Ministers of the Crown, responsible to Parliament, and having no partial interests, should intervene as umpire between the represented classes and those which are incapable of being represented, and for this purpose should exercise a controlling authority.

Such has practically been the system of government which has for some years existed in British Guiana, I believe with advantage to the community. I cannot forget that, under this system, and by the legislation of the Court of Policy, most important and beneficial reforms have been effected in the whole body of the colonial laws, and that a wise and liberal provision has been made by the Combined Court for ecclesiastical and educational objects, for reforms of penal discipline, and for many other useful purposes, which are rarely so well provided for in other communities. It would be with regret that I should see a necessity created for altering this system in its general structure, although I am aware that it is susceptible of some material improvements in detail. But looking to our experience of its results on the less favourable side, I find that whilst working well under ordinary circumstances, it has more than once exposed the public interests to serious injury and danger, from the adoption by the Combined Court of the same extreme proceeding to which they now threaten to resort,—a proceeding which, in well-constituted representative governments, is always regarded as a resource not to be thought of except in some extremity of danger to popular rights. On the former occasions on which the Combined Court has stopped the supplies, or indicated an intention of doing so, my predecessors, Lord Aberdeen¹ and Lord Stanley, had under their consideration the changes which it might become necessary to make in the constitution of that body, and it has appeared formerly as now, that at those conjunctures the Combined Court represented the sentiments of the very inconsiderable number of the inhabitants (not much exceeding 800) who possess the franchise, and that these were not in harmony with the sentiments of any large portion of the colonists. The remedy to which this state of things pointed was a change in the electoral system, which should bring the elected members of the Combined Court into more direct and extensive connexion with the inhabitants at large. For the reasons to which I have already adverted, I should regard such a change as not unattended with hazard, nor to be adopted except in case of necessity; but a necessity will undoubtedly arise for adopting some essential alteration in the existing system of government, if that system should once more involve the best interests and the safety of the colony in the dangers with which they are now again so seriously threatened.

¹ Lord Aberdeen was Colonial Secretary in the short Peel Ministry of 1834-5. During his term of office had occurred one of the periodical disputes about the Civil List. He was, of course, the same Lord Aberdeen who had since been Foreign Secretary and was soon to be Prime Minister.

MEMORANDUM OF STEPHEN (December 1848)

(C.O. 48/289: P.R.O.)

During the war we conquered, and during the peace we have settled, numerous colonies, without one forethought how they might be well governed. To find a good system of government for them, was, in fact, an insoluble problem. For not finding the solution of it, the Colonial Office has sustained much reproach, belonging, far more justly to the original authors of the difficulty!

I do not believe that it is possible that such a society as that of the Cape of Good Hope, occupying such a territory as theirs, should be well governed. I do not anticipate much good from any possible change in their political institutions; nevertheless I suppose change to be inevitable.

The temper of the times—the ignorant clamour of colonial agitators in this country—the language so often repeated in Parliament—the language of successive Secretaries of State in their despatches—the cherished expectations of the colonists or rather of the aspirants for power and popularity at Cape Town—the concurrent opinions of different governors and of the chief public Officers—the notoriety of those opinions and the general consent of all producible despatches—would necessitate some great organic change, even if the arguments in favor of it were comparatively weak. In fact however those arguments are almost conclusive to shew, that what exists is bad, though they may fail to shew, as clearly, that what is proposed is better.

As to the nature of the change, there seems a very general concurrence in favour—first, of a single legislature—secondly of an elective assembly—thirdly of a Legislative Council (whether nominated or elected, or partly one partly the other, is debated)—fourthly of a reservation of a large Civil List. The subordinate questions are unripe for immediate decision, or present consideration.

Lord Grey, either concurring in, or assuming for the sake of argument the adoption of the three first proposals contemplates the substitution for a Civil List of a transference to the Crown of the whole Colonial Revenue, as it now stands, to be applied by the Crown to the same general uses as at present unless any local law, to be sanctioned by the Crown, shall provide otherwise; leaving to the Assembly the right to *advise*, though not the power to *controul*, in whatever relates to the public expenditure, within the limits in question.

The doubt I entertain is not whether this project would be wise if it were practicable, but whether it could really be carried into execution.

The early history of our own country does not seem to me to

yield any analogy, from which one could safely predict the future history of the Cape of Good Hope, under the proposed arrangement. The temper, thoughts, and spirits of those times, were almost wholly dissimilar from the state of public opinion in the civilised world at present. The Princes of the house of Tudor not excepting Mary, were all persons of extraordinary ability, with a strong hold on the loyalty of their subjects. But the real secret of their strength lay at first in the popular terror of a return of the Civil Wars, compared with which despotism was regarded as a light evil; and then in the popular terror of the revival of the Roman Catholic faith and persecutions, which alarm supplied Elizabeth with the great fulcrum of her absolute and imperious rule. But, at the Cape of Good Hope, there is no prestige of illustrious names, and no reaction against recent passions, and no terror of impending evils, to reconcile people to the exercise by their rulers of a power for which no precedent in English history can be found within the last three centuries.

It is a still greater difficulty that, in the whole of our Colonial history, there is no such precedent. 'Representation and taxation' are united together by a sort of constitutional proverb; as in all our colonies they have ever been united in fact—The Cape colonists would never cease to maintain the theory, and to allege the fact, in support of their demand for further concessions.

It is inherent in the nature of all such bodies to believe, or at least to act speak and write as though they believed, that every accession to their own power is likewise an accession to the public weal. It is inherent in the nature of all local journalists, to echo such pretensions, and to fan such discontents. It is scarcely less inevitable that the remonstrances of the Colonial Legislature and journals, should be re-echoed in our own newspapers and in Parliament. Before that combination the Colonial Office can make no stand. I say 'the Colonial Office' because no member of the Cabinet but the Head of that office can ever be persuaded to devote his time to such repulsive controversies. The policy of yielding is the obvious and easy policy, and will in all such cases be infallibly adopted so long as the local clamour takes the form of constitutional agitation, and does not ripen into armed resistance; for when it does, the spirit of self assertion is roused although at a fearful expence.

Now it seems to me that, long before coming to any armed resistance, the proposed Cape of Good Hope Legislature must wrest from the Government all the powers denied them for controuling public expenditure, unless the lawyers merchants and newspaper writers composing the Assembly, shall prove very bad tacticians indeed. The Governor and through him the Secretary of State will be assailed by the advice which the Assembly is permitted to tender, and by the bills which the plan allows them to pass. Much bad advice, and many foolish bills, will be the result; as we constantly see that the movers

in public affairs are rash in proportion as they are powerless, and circumspect in proportion as they are powerful.

The plan would, I fear, lay the basis of perpetual conflict, and afford at once a text and a premium for agitation. I confess myself to have no faith in the arbitrament of superior reason and wisdom in such disputes; the arbiter being a government, or rather a single member of that Government, living in a different hemisphere, and regarded with the jealousy and distrust which wait on all external authority; especially on an authority to which it is so easy to impute ignorance, prejudice, and indifference.

I confine myself to the precise question which L^d Grey has mooted. It would be easy to enlarge upon it but the preceeding lines sufficiently explain the nature and grounds of my doubts. If those doubts can be shewn to be unfounded, then I should entirely subscribe to L^d Grey's opinion, that instead of a Civil List the Government should take to itself the management of the whole local revenue.

J. S.

35

RESOLUTIONS OF SETTLERS' CONSTITUTIONAL ASSOCIATION OF WELLINGTON (August 27, 1849)¹

(*P. P.*, 1850, xxxvii.)

Resolution 9.—Moved by Mr. John Wade, and seconded by Mr. Robert Wallace:—

That Sir George's plea for delay on account of the state of the natives, is an illustration of what a great writer² has happily termed the 'hobgoblin fallacy'; addressing itself not to the reason, but the ignorance, the prejudices, and the fears of parties at so great a distance as the Home Government is from this colony. Considering that, as Sir George states, the southern province would consist of a narrow district round the town of Wellington and of the Middle Island, it is evident, from the paucity of the natives interested, that it can have little or no foundation here; and in reference to the position of this province, with regard to the native population, this Association thinks it desirable to point out the fact, that according to official returns which have been published from time to time, the European population is fully equal in number to, if not actually in excess of, the native, and that no reason exists on that ground for withholding from the colonists the privileges of self-government; and they protest against that species of logic which, to suit the purpose of the arguer,

¹ The colonists at Wellington and other southern settlements formed Constitutional Associations, after the suspension of the New Zealand Government Act, to agitate for free institutions.

² Almost certainly Bentham, whose use of the word 'hobgoblin' in a similar sense is quoted in the *New English Dictionary*.

treats of the colonists of this province at one time in reference to their limited local character, and at another would inflict upon them the consequences attributable to the more extended relations of the whole islands. But the plea is altogether untenable on other grounds.

1. The natives would be represented by the officials in a Representative Council, equally as they are in the nominee one.

2. The Governor would still retain his veto on all measures affecting their interests.

3. That, to whatever extent the franchise might be bestowed upon them, they would have an infinitely more direct influence in a representative than in the existing nominee council, while their desire to obtain the franchise would have a proportionally civilizing effect.

4. That it is monstrous to assume, as Sir George Grey does, that the settlers, whose prosperity entirely depends upon the advancement of the colony, and especially upon peace being preserved between themselves and the aboriginal inhabitants, are less desirous or less capable of devising measures calculated to promote and insure the permanent welfare of both races than a Governor, who necessarily arrives ignorant of every subject connected with the colony, who, holding his office only for a period of five or six years, is not merely prevented from acquiring the knowledge and experience necessary to administer the Government with advantage to the inhabitants, but is almost unavoidably obliged to have recourse to measures of a purely temporary nature, instead of adopting and carrying out a policy based upon broad and comprehensive principles; and who, moreover, can seldom feel any personal interest in the colony, except so far as it may serve as a stepping-stone to some better and more lucrative appointment.

Resolution II.—Moved by Captain Rhodes; Seconded by Mr. Johnston:—

That, notwithstanding Sir George Grey's professions, this Association is convinced that he is not, and never really was, favourable to representative institutions; and that his treatment of the question of their introduction into this colony has been marked by the most subtle diplomacy, and an entire absence of that straightforwardness which the colonists are entitled to expect from the Representative of Her British Majesty. When the question was first mooted, the feeling of the colonizing public in England had been openly and strongly expressed, in Parliament and elsewhere, in favour of the immediate introduction of self-government into New Zealand. This was followed by Lord Grey's very decided outline of a constitution which Sir George was directed to introduce at once into the colony. Echoing the feeling which was manifested at home, Sir George expressed, in a very emphatic manner, his conviction of the expediency of immediately introducing self-government into the colony, and of the re-

markable fitness of the colonists and natives to receive immediately such a boon; but he took care not to introduce it, and, in order to gain time and take his chance of the chapter of accidents, referred the question home on points of detail. Public ardour having somewhat cooled at home, and the Home Government having suspended Lord Grey's constitution, giving Sir George a *carte blanche*, he determined to take the bold step of postponing representative institutions till he should have quitted the colony, while at the same time he would take credit for having framed a free constitution to be prospectively introduced. So putting out of sight altogether his previous convictions of the fitness of the colonists, and the propriety of the time, he unwrites all he had written, and overlooking the fact that all the reasons against the immediate introduction of self-government now urged by him existed, if at all, more strongly when he expressed himself in favour of it, he becomes the most determined opponent of what he before pretended to advocate. Down to the month of February 1848, though seeking to obtain the postponement of self-government, he professed to adhere to his intention of immediately introducing representative institutions. In that month (having previously proclaimed Lord Grey's charter) he appointed to high offices in the Local Government three gentlemen¹ who had previously been known chiefly for their advocacy of self-government, and who, in the innocence of their hearts, continued such advocacy on public occasions after their appointments; and from them he not only concealed his intention of declining to introduce representative institutions, but he led them to believe that they would be immediately bestowed. In September he was compelled by the public deputations before referred to, to avow his intention of postponing self-government. These various movements have convinced this Association that Sir George never intended to introduce free institutions during his tenure of office, a supposition in accordance with his diplomatic turn of mind, which renders it easier for him to conduct the affairs of the colony by individual influences than by fairly meeting the demands of large or popular bodies.

The same conclusion is arrived at from the internal evidence to be found in Sir George Grey's proposed constitution.² He recommends that the 'Provincial Councils in making laws shall conform to and

¹ Mr. Alfred Domett (the Waring of Browning's poem and one of the leading settlers of Nelson) had become Colonial Secretary of New Munster, the Hon. H. W. Petre Colonial Treasurer, and Mr. Daniel Wakefield (after the office had been declined by Mr. Fox, who succeeded William Wakefield as Principal Agent of the New Zealand Company) Attorney-General. These gentlemen remained in office until the inauguration of the new constitution in 1853.

² The constitution proposed by Sir G. Grey at this time (in his despatch of November 29, 1848) was certainly less liberal than the one he proposed in 1851 (below, No. 44). The Provincial Councils were to be one-third nominated; the provinces were to have lieutenant-governors appointed by the Crown; and the Crown was also to nominate the Upper House of the General Assembly.

observe all such instructions as may from time to time be issued by Her Majesty for their guidance; that such laws shall be subject to the approval or disallowance of Her Majesty; and that no Ordinance of the Provincial Council shall be assented to by the Lieutenant-Governor without the previous sanction of the Governor-in-Chief'. Moreover, the laws enacted 'must not be repugnant to the law of England,' a term to which, as an able legal writer has observed, 'no sensible meaning can be attached—a term which has admitted of the existence of the various slave laws of the West Indies, and which has never obtained any other authority than the wavering policy of the Home Government may from time to time have found convenient to allow,' and which consequently places it in the power of the Home Government, in innumerable instances, to disallow, for technical objections, laws of practically vital importance to the colony. Hedged round with so many restrictions, the limits of self-government are narrowed to a degree altogether incompatible with true freedom; limits which no man who sincerely desired to bestow 'the inestimable boon of self-government,' would have thought of imposing. Nor is Sir George Grey's anxiety to retain power in the hands of the Governor less obvious in his proposal to make the franchise of the natives dependent upon a Government certificate, and to give the Governor a right to alter that franchise from time to time; a skilful exercise of such power placing the elections entirely in the Governor's hands. But above all is his insincerity evidenced by his proposal to postpone the introduction of self-government to a period when, according to the usual term of the official tenure, he will have quitted the colony. There is no other magic in the particular period of four years, no particular events which turn upon that date; the only incident which can be predicted with certainty likely to affect the question, being that before that period Sir George will be elsewhere than in New Zealand. Admirably does his position illustrate the remark of the great jurist, that 'this is a sort of argument or observation we so often see used by those who, being hostile to a measure, are ashamed or afraid of being seen so. They pretend, perhaps, to approve of it; they only differ as to the proper time of bringing it forward; but it may be a matter of question,' says he, 'whether this argument was ever used by a man whose wish it was not that the measure should remain excluded for ever.'

RESOLUTIONS OF PUBLIC MEETING AT ADELAIDE (December 21, 1849) [EXTRACT]

(*P.P.*, 1850, xxxvii.)

At a public meeting of the colonists, held at the Exchange, King William-street, Adelaide—Charles B. Newenham, Esq., sheriff, in the chair, the following resolutions were unanimously agreed to:—

Proposed by J. H. Fisher, Esq., and seconded by G. S. Kingston, Esq.—

- 1st. That the Bill laid before Parliament, entitled 'A Bill for the better government of Her Majesty's Australian Colonies,' so far as it relates to the colony of South Australia, meets the wishes and wants of the colonists in most of its most essential provisions; and by recommending the concession of a Representative Government with such extensive powers, deserves to be regarded as a wise, liberal, and comprehensive measure; and that the thanks of the colonists are due to the Right Hon. Earl Grey, Secretary for the Colonies, and to Mr. Hawes, Lord John Russell, and Mr. Labouchere, the members of the House of Commons who prepared and brought in the Bill.¹

Proposed by Samuel Davenport, Esq., and seconded by George Elder, Esq.—

- 2nd. That the formation of a General Assembly of the Australasian colonies, however desirable on the majority of matters proposed to be left to the decision of such Assembly, is in principle as in form a Federal Union; is, in a British sense, unconstitutional, as morally opposed to the social institution of the colony, and endangering our colonial independence.

Proposed by G. A. Anstey, Esq., and seconded by A. H. Davis, Esq.—

- 3rd. That the resolutions recently passed by the Legislative Council, recommending a second chamber, do not represent the opinion nor convey the sentiment of the colonists, particularly as the proposed Act confers all needful powers for amending the constitution, and adapting it to future exigencies; and that any provision which should enforce upon the colonists a system of

¹ Benjamin Hawes was Parliamentary Under-Secretary for the Colonies from 1846 to 1851, when he became Deputy Secretary at War. He had been a Radical M.P. since 1832, and belonged to the group of Colonial Reformers. He was a good speaker and a capable and zealous administrator.

Henry Labouchere, afterwards Lord Taunton, was at this time President of the Board of Trade. He always took an interest in colonial questions, and from Nov. 1855 to Feb. 1858 was Secretary of State for the Colonies. He was highly respected in the House of Commons, though his abilities were not quite of the first order.

life nominees in such a Chamber, this meeting deprecates as an intolerable evil, which might neutralize all the good to be anticipated from the proposed measure.

Proposed by F. S. Dutton, Esq., and seconded by G. M. Waterhouse, Esq.—

4th. The colonists being prepared as heretofore to bear the whole expenses of their civil government, consider that they have a constitutional right to regulate, by means of their representatives in Council, the mode of raising and of appropriating the colonial revenue, free from all direction and control by Her Majesty's Treasury, or by the Commissioners of Customs; and they further consider that the Local Government should have the power of appointing all officers of government, and that the salaries should be fixed by the Colonial Legislature.

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AUSTRALIAN COLONIES GOVERNMENT ACT 1850 [EXTRACTS]

(13 & 14 *Vict. cap.* LIX.)

. . . Be it enacted . . . That after such Provisions as herein-after mentioned shall have been made by the Governor and Council of New South Wales, and upon the issuing of the Writs for the first Election in pursuance thereof, as herein-after mentioned, the Territories now comprised within the said District of Port Phillip, including the Town of Melbourne, and bounded on the North and North-east by a straight Line drawn from Cape How to the nearest Source of the River Murray, and thence by the course of that River to the Eastern Boundary of the Colony of South Australia, shall be separated from the Colony of New South Wales, and shall cease to return Members to the Legislative Council of such Colony, and shall be erected into and thenceforth form a separate Colony, to be known and designated as the Colony of Victoria.

II. And be it enacted, That the Number of Members of which, after such Separation as aforesaid, the Legislative Council of the Colony of New South Wales shall consist, shall, in manner herein-after mentioned, be determined by the Governor and Council of New South Wales; and there shall be within and for the Colony of Victoria a separate Legislative Council, to consist of such Number of Members as shall in like Manner be determined by the said Governor and Council; and such Number of the Members of the Legislative Council of each of the said Colonies respectively as is equal to One Third Part of the whole Number of Members of such Council, or, if such whole Number be not exactly divisible by Three, One Third of the next greater Number which is divisible by Three, shall be

appointed by Her Majesty, and the remaining Members of the Council of each of the said Colonies shall be elected by the Inhabitants of such Colony.

IV. And be it enacted, That every Man of the Age of Twenty-one Years, being a natural-born or naturalized Subject of Her Majesty, or legally made a Denizen of New South Wales, and having a Freehold Estate in possession situate within the District for which his Vote is to be given, of the clear Value of One Hundred Pounds Sterling Money above all Charges and Incumbrances in any way affecting the same, of or to which he has been seised or entitled, either at Law or in Equity, for at least Six Calendar Months next before the Date of the Writ of such Election, or in case a Registration of Electors shall be established next before the last Registration of Electors, or, being a Householder within such District, occupying a Dwelling House of the clear annual Value of Ten Pounds Sterling Money, and having resided therein Six Calendar Months next before such Writ or Registration as aforesaid, or holding at the Date of such Writ or at the Time of such Registration a Licence to depasture Lands within the District for which his Vote is to be given from the Government of New South Wales, or having a Leasehold Estate in possession situate within such District of the Value of Ten Pounds Sterling Money per Annum, held upon a Lease which at the Date of such Writ or at the Time of Registration has not less than Three Years to run, shall be entitled to vote at the Election of a Member of the Legislative Council:¹ Provided always, that no Man shall be entitled to vote who has been attainted or convicted of Treason, Felony, or other infamous Offence in any Part of Her Majesty's Dominions, unless he have received a free Pardon or one conditional on not leaving the Colony for such Offence, or have undergone the Sentence passed on him for such Offence; and provided also, that no Man shall be entitled to vote unless at the Time of such Election or Registration of Electors (as the Case may be) he shall have paid up all Rates and Taxes which shall have become payable by him as Owner or Leaseholder in respect of such Estate, or as Occupier in respect of such Occupancy, or as the Holder of a Licence in respect of such Licence, except such as shall have become payable during Three Calendar Months next before such Election or Registration respectively.

VII. And be it enacted, That it shall be lawful for the Legislatures now by Law established within the Colonies of Van Diemen's Land and South Australia respectively, . . . to establish within the said Colonies of Van Diemen's Land and South Australia respectively a Legislative Council, to consist of such Number of Members, not exceeding Twenty-four, as they shall think fit; and that such Number of the

¹ The franchise, unlike that of the Act of 1842, included the squatting class, who had complained a good deal of the earlier omission, though of course a great many of them possessed the vote by virtue of other qualifications.

Members of each Council so to be established as is equal to One Third Part of the whole Number of Members of such Council, or if such whole Number be not exactly divisible by Three such Number as is next greater than One Third of the whole Number, shall be appointed by Her Majesty, and the remaining Members of such Council shall be elected by the Inhabitants of the Colony in which such Council shall be established. . . .

IX. And be it enacted, That upon the Presentation of a Petition signed by not less than One Third in Number of the Householders within the Colony of Western Australia, praying that a Legislative Council according to the Provisions of this Act be established within such Colony, and that Provision be made for charging upon the Revenues of such Colony all such Part of the Expenses of the Civil Establishment thereof as may have been previously defrayed by Parliamentary Grants, it shall be lawful for the Persons authorized and empowered to make, ordain, and establish Laws and Ordinances for the Government of the said Colony, by any Law or Ordinance to be made for that Purpose, subject to the Conditions and Restrictions to which Laws or Ordinances made by such Persons are now subject, to establish a Legislative Council within such Colony, to consist of such Number of Members as they shall think fit, and such Number of the Members of such Council as is equal to One Third Part of the whole Number of Members of such Council, or if such Number be not exactly divisible by Three, One Third of the next greater Number which is divisible by Three, shall be appointed by Her Majesty, and the remaining Members of the Council shall be elected by the Inhabitants of the said Colony.¹ . . .

XIII. Provided always, and be it enacted, That so much of the said firstly-recited Act of the Sixth Year of the Reign of Her Majesty as requires that all Bills altering the Salaries of the Judges, or any of them, shall in every Case be reserved for the Signification of Her Majesty's Pleasure thereon, shall not apply to or be in force in the Colonies of Victoria, Van Diemen's Land, South Australia, and Western Australia, or any of them, and after the Establishment of the said Colony of Victoria shall be repealed.

XIV. And be it enacted, That the Governors of the said Colonies of Victoria, Van Diemen's Land, South Australia, and Western Australia respectively, with the Advice and Consent of the Legislative Councils to be established in the said Colonies under this Act, shall have Authority to make Laws for the Peace, Welfare, and good Government of the said Colonies respectively, and, with the Deductions and subject to the Provisions herein contained, by such Laws to appropriate to the public Service within the said Colonies respectively the whole of Her Majesty's Revenue within such Colonies

¹ These provisions were brought into operation when Western Australia received representative government in 1870.

arising from Taxes, Duties, Rates and Imposts levied on Her Majesty's Subjects within such Colonies: Provided always, that no such Law shall be repugnant to the Law of England, or interfere in any Manner with the Sale or other Appropriation of the Lands belonging to the Crown within any of the said Colonies, or with the Revenue thence arising; and that it shall not be lawful for any such Council to pass, or for any such Governor to assent to, any Bill appropriating to the public Service any Sums or Sum of Money unless the Governor on Her Majesty's Behalf shall first have recommended to the Council to make Provision for the specific public Service towards which such Money is to be appropriated; and that no Part of Her Majesty's Revenue in any of the said Colonies arising from the Sources aforesaid shall be issued, or shall be made by any such Law issuable, except in pursuance of Warrants under the Hand of the Governor of the Colony, directed to the public Treasurer thereof.

XVII. And be it enacted, That there shall be payable to Her Majesty, every Year, out of the Revenue Funds arising from Taxes, Duties, Rates and Imposts levied within the said Colony of New South Wales after the Establishment of the Colony of Victoria, the several Sums mentioned in the Schedule (A.) to this Act; and out of the like Revenue Fund levied within the said Colony of Victoria after the Establishment thereof, the several Sums mentioned in the Schedule (B.) to this Act; and out of the like Revenue Fund levied within the Colony of Van Diemen's Land after the Establishment of a Legislative Council therein under this Act, the several Sums mentioned in the Schedule (C.) to this Act; and out of the like Revenue Fund levied within the Colony of South Australia after the Establishment of a Legislative Council therein under this Act, the several Sums mentioned in the Schedule (D.) to this Act; such several Payments to be made for defraying the Expenses of the Services and Purposes mentioned in the said Schedules respectively.¹ . . .

XVIII. And be it enacted, That it shall be lawful for the Governors and Legislative Councils of the said Colonies of New South Wales, Victoria, Van Diemen's Land, and South Australia respectively, by any Act or Acts, to alter all or any of the Sums mentioned in the said Schedules respectively, and the Appropriation of such Sums to the Services and Purposes therein mentioned, but every Bill which shall be passed by the Council in any of the said Colonies altering the Salary of the Governor, or altering any of the Sums mentioned in the Third Part of any of the said Schedules (A.), (B.), and (C.), shall be reserved for the Signification of Her Majesty's Pleasure thereon; . . . and Accounts in Detail of the Expenditure of the several Sums for the Time being appropriated under this Act, or such Act or Acts as

¹ The amount of the schedules was in New South Wales £73,500, in Victoria £20,000, in Van Diemen's Land £41,900, in South Australia, where provision was made for the Governor and for the administration of justice and of the public offices but none for public worship, £13,000.

aforesaid of the Governor and Legislative Council, to the several Services and Purposes mentioned in the said Schedules shall be laid before the Legislative Councils of such Colonies respectively within Thirty Days next after the Beginning of the Session after such Expenditure shall have been made: Provided always, that it shall not be lawful for the Governor and Legislative Council of any of the said Colonies, by any such Act as aforesaid, to make any Diminution in the Salary of any Judge to take effect during the Continuance in Office of any Person being such Judge at the Time of the passing of such Act....

XXIII. 'And whereas by the said firstly-recited Act of the Sixth Year of the Reign of Her Majesty it was enacted, that one Half of the Expense of the Police Establishment of the said Colony of New South Wales (exclusive of the Convict Establishment) should be defrayed out of the general Revenue arising from Taxes, Duties, Rates and Imposts within the said Colony, and the other Half should be defrayed by Assessment upon the several Districts of the Colony, in such Proportion as should be from Time to Time fixed by the Governor and Legislative Council:' Be it enacted, That so much of the Provision lastly herein-before recited as requires that Half of the Expense of such Police Establishment as aforesaid shall be defrayed by Assessment upon the several Districts of the Colony shall be repealed.

XXIV. And be it enacted, That notwithstanding any Letters Patent issued under the said firstly-recited Act of the Sixth Year of the Reign of Her Majesty, or to be issued under this Act, or anything in either of such Acts contained, it shall be lawful for the Governors and Councils of the said Colonies of New South Wales, Van Diemen's Land, South Australia, and Western Australia respectively by any Act or Acts to make such Regulations and Provisions for or concerning the raising, assessing, and levying of Tolls, Rates, and Assessments within or on or in respect of any public Works or any Property within Districts formed in such Colonies respectively under the said Act or this Act, and the Appropriation of such Tolls, Rates, and Assessments, and to make such Alterations and Provisions in and concerning the Constitution, Duties, and Powers of District Councils, and such Alterations in the Number and Boundaries of Districts, and such Provisions for establishing District Councils in new or altered Districts, as to such respective Governors and Councils may seem meet.

XXVII. And be it enacted, That subject to the Provisions of this Act, and notwithstanding any Act or Acts of Parliament now in force to the contrary, it shall be lawful for the Governor and Legislative Council of the Colony of New South Wales, and after the Establishment of Legislative Councils therein respectively under this Act for the respective Governors and Legislative Councils of the Colonies

of Victoria, Van Diemen's Land, South Australia, and Western Australia, to impose and levy such Duties of Customs as to such respective Governors and Councils may seem fit on the Importation into such respective Colonies of any Goods, Wares, and Merchandize whatsoever, whether the Produce or Manufacture of or imported from the United Kingdom, or any of the Colonies or Dependencies of the United Kingdom, or any Foreign Country: Provided always, that no new Duty shall be so imposed upon the Importation into any of the said Colonies of any Article the Produce or Manufacture of or imported from any particular Country or Place which shall not be equally imposed on the Importation into the same Colony of the like Article the Produce or Manufacture of or imported from all other Countries and Places whatsoever.

XXXI. Provided also, and be it enacted, That it shall not be lawful for the Legislatures of any of the said Colonies to levy any Duty upon Articles imported for the Supply of Her Majesty's Land or Sea Forces, nor to levy any Duty, impose any Prohibition or Restriction, or grant any Exemption, Bounty, Drawback, or other Privilege, upon the Importation or Exportation of any Articles, nor to impose any Dues or Charges upon Shipping, contrary to or at variance with any Treaty or Treaties concluded by Her Majesty with any Foreign Power.

XXXII. And be it enacted, That, notwithstanding anything hereinbefore contained, it shall be lawful for the Governor and Legislative Council of New South Wales, after the Separation therefrom of the Colony of Victoria, and for the Governors and Legislative Councils of the said Colonies of Victoria, Van Diemen's Land, South Australia, and Western Australia respectively, after the Establishment of Legislative Councils therein under this Act, from Time to Time, by any Act or Acts to alter the Provisions or Laws for the Time being in force under this Act, or otherwise, concerning the Election of the elective Members of such Legislative Councils respectively, the Qualification of Electors and elective Members, or to establish in the said Colonies respectively, instead of the Legislative Council, a Council and a House of Representatives, or other separate Legislative Houses, to consist respectively of such Members to be appointed or elected respectively by such Persons and in such Manner as by such Act or Acts shall be determined, and to vest in such Council and House of Representatives or other separate Legislative Houses the Powers and Functions of the Legislative Council for which the same may be substituted: Provided always that every Bill which shall be passed by the Council in any of the said Colonies for any of such Purposes shall be reserved for the Signification of Her Majesty's Pleasure thereon; and a Copy of such Bill shall be laid before both Houses of Parliament for the Space of Thirty Days at the least before Her Majesty's Pleasure thereon shall be signified.

XXXIV. 'And whereas by the said firstly-recited Act of the Sixth

Year of the Reign of Her Majesty Power is reserved to Her Majesty by Letters Patent to be from Time to Time issued under the Great Seal of Great Britain and Ireland to define the Limits of the said Colony of New South Wales, and to erect into a separate Colony or Colonies any Territories which then were or were reputed to be or thereafter might be comprised within the said Colony of New South Wales, provided that no Part of the Territories lying Southward of the Twenty-sixth Degree of South Latitude in the said Colony of New South Wales should by any such Letters Patent as aforesaid be detached from the said Colony: And whereas it is expedient that the Power reserved to Her Majesty as aforesaid should be extended over certain Parts of the said Territories lying Southward of the Twenty-sixth Degree of South Latitude, upon the Application of the Inhabitants thereof: Be it enacted, That it shall be lawful for Her Majesty from Time to Time, upon the Petition of the Inhabitant Householders of any such of the Territories in the said recited Proviso mentioned as lie Northward of the Thirtieth Degree of South Latitude, to detach such Territories from the Colony of New South Wales, and to erect such Territories into a separate Colony or Colonies, or to include the same in any Colony or Colonies to be established under the Powers of the last-mentioned Act; and all the Powers and Provisions of the last-mentioned Act in respect to any new Colony or Colonies to be established under such Act shall extend to any new Colony or Colonies to be established under this Enactment.¹

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DESPATCH FROM EARL GREY TO SIR C. FITZROY

[EXTRACT]

(*P.P.*, 1851, xxxv.)

SIR, Downing-street, 21 June 1850.

I have the honour to acknowledge the receipt of your despatch, Military, No. 227, of the 7th of November last, with the minute therein enclosed, of the deliberations of the Executive Council of New South Wales, on the defenceless state of Port Jackson.²

Having attentively considered that minute, I am compelled to state, that so far from finding any reason for altering my previous view of the subject, I conceive that the facts which are set out in it are calculated to confirm that view. I have no doubt that prudence does prescribe the erection of works sufficient to protect the city of Sydney

¹ On July 21, 1856, Russell informed the Governor of New South Wales that the Imperial Government had decided to act upon this provision, which was repeated by the New South Wales Constitution Act of 1855, and accede to the petitions for separation. The proclamation actually effecting the separation was issued on Dec. 1, 1859. The boundary was fixed at about 29° S.

² Port Jackson is, of course, the harbour of Sydney.

from a predatory attack; but the great value of the property it contains, and the wealth and prosperity evinced by the very large sums of money stated to be in the banks, afford proof no less of the ability of the colony to meet the expense of providing such protection, than of the necessity of doing so.

On this subject I have to remind you, that many of the great commercial cities of this country are even now not less open than Sydney to predatory attacks, while some even of our arsenals and important military stations are as yet but very imperfectly protected; and it is altogether unreasonable to suppose that Parliament could be asked to vote money from the revenue of the United Kingdom for the defence of Sydney, while there is still a want of similar works at home, more especially as it must be borne in mind how much more lightly the inhabitants of New South Wales are taxed than those of Her Majesty's subjects who remain in this country.

Her Majesty's servants are prepared to take measures for affording to the inhabitants of the colonies their fair share of protection as a portion of the British empire. Any attack made upon New South Wales, or any injury to any inhabitant of the colony, would be resented in the same manner as an attack upon any other part of Her Majesty's dominions, or an injury to any other of Her Majesty's subjects. But while we admit this as the rule to be observed, we consider that Her Majesty's subjects inhabiting the colonies must take their fair share with their fellow subjects at home in bearing the common burthen of providing for the safety of the empire as a whole, and that the smallest contribution which they can be expected to make towards this object is that of undertaking the local expenses which are required.

It appears to have escaped the notice of yourself and of the Executive Council, that in the earlier days of British colonization the colonists were left to depend in a far greater degree than at present on their exertions. The inhabitants of what are now the United States of America were left, up to the time of the separation, with exceedingly little assistance from the mother country to defend themselves from the numerous and warlike tribes of Indians by whom they were surrounded; nay, even during war with France, a large part of the burthen of maintaining the arduous contest with that powerful monarchy with its Indian allies, fell upon the British American provinces, and not upon the mother country. At the present time the Legislature of Jamaica has the entire charge of the fortifications of the island.

New South Wales has now advanced so far in wealth and population, that without further aid from the mother country than you will have learned from my recent despatches it is intended to afford, the colony is well able to do what is necessary in order to provide for its own defence.

LETTER FROM HOWE TO GREY (November 25, 1850)

[EXTRACTS]

(P.P., 1851, xxxvii.)

Placed between two mighty nations, we sometimes feel that we belong, in fact, to neither. Twenty millions of people live beside us, from whose markets our staple productions are excluded, or in which they are burthened with high duties, because we are British subjects. For the same reason, the higher paths of ambition, on every hand inviting the ardent spirits of the Union, are closed to us. From equal participation in common rights, from fair competition with them in the more elevated duties of Government and the distribution of its prizes, our British brethren, on the other side, as carefully exclude us. The President of the United States is the son of a schoolmaster.¹ There are more than 1000 schoolmasters teaching the rising youth of Nova Scotia, with the depressing conviction upon their minds, that no very elevated walks of ambition are open either to their pupils or their children.

Protection to any species of industry in Nova Scotia we utterly repudiate; but your Lordship is well aware that many branches of industry, many delicate and many coarse manufactures, require an extended demand before they can be sustained in any country. This extended demand the citizens of the great Republic enjoy; and it has done more for them than even their high tariffs or their peculiar institutions. The wooden nutmeg of Connecticut may flavour, untaxed, the rice of Carolina. Sea-borne in a vessel which traverses two mighty oceans, the coarse cloths of Massachusetts enter the Port of St. Francisco² without fear of a custom-house or payment of duty. The staple exports of Nova Scotia cannot cross the Bay of Fundy without paying 30 per cent.; and every species of colonial manufacture is excluded from Great Britain by the comparatively low price of labour here, and from the wide range of the Republic by prohibitory duties.

The patience with which this state of things has been borne; the industry and enterprise which Nova Scotia has exhibited, in facing these difficulties, entitle her to some consideration. But a single century has passed away since the first permanent occupation of her soil by a British race. During all that time she has preserved her loyalty untarnished, and the property created upon her soil, or which floats under her flag upon the sea, is estimated at the value of 15,000,000*l.* She provides for her own civil Government,—guards her criminals,—lights her coast,—maintains her poor,—and educates

¹ The President of the United States at the time was Millard Fillmore. President Taylor had died a few months earlier.

² San Francisco was very much in men's minds at the time on account of the great discoveries of gold in California in 1849.

her people, from her own resources. Her surface is everywhere intersected with free roads, inferior to none in America; and her hardy shoresmen not only wrestle with the Republicans for the fisheries and commerce of the surrounding seas, but enter into successful competition with them in the carrying trade of the world. Such a country, your Lordship will readily pardon me for suggesting, even to my gracious Sovereign's confidential advisers, is worth a thought. Not to wound the feelings of its inhabitants, or even seem to disregard their interests, may be worth the small sacrifice she now requires. . . .

Nova Scotians have seen 20,000,000*l.* not lent, but given, to their fellow-colonists in the West Indies. They admired the spirit which overlooked pecuniary considerations in view of great principles of national honour and humanity. But by that very act they lost, for a time, more than would make this railroad.¹ Their commerce with the West Indies was seriously deranged by the change, and the consumption of fish, their great staple, largely diminished.

If money is no object when the national honour is at stake in the West Indies, why should it be in British America? If the emancipation of 800,000 Blacks is a moral obligation, to be redeemed at the cost of 20,000,000*l.*, surely a territory, which now contains double the number of Whites, attached British subjects, and which will ultimately contain ten times that number, is worth risking a million or two to preserve. . . .

We daily see our friends or acquaintance across the frontier, not only distinguishing themselves in the State Legislatures which guard their municipal interests, but enriching the national councils with the varied eloquence and knowledge drawn from every portion of the Union. From the national councils of his country, the British American is shut out. Every day he is beginning to feel the contrast more keenly. I was not at the recent Portland Convention,² but the colonists who did attend, astonished the Americans by their general bearing, ability, and eloquence. But when these men separated, it was with the depressing conviction in the hearts of our people, that one set would be heard, perhaps, on the floors of Congress the week after, or be conveyed in national ships to foreign Embassies; while the other could never lift their voices in the British Parliament, nor aspire to higher employment than their several provinces could

¹ This letter was written on a visit made by Howe to England with the object of enlisting the sympathy and financial support of the Imperial Government in the building of railways to connect the Maritime Provinces with Quebec and also (perhaps) with Portland. The Halifax-Quebec scheme had been under consideration for some years, and had the support of Earl Grey, but the Imperial Government had never committed itself. Howe's negotiations, however, led in March 1851 to the acceptance by the Government of the principle of a guarantee. Unfortunately when he returned to America difficulties and misunderstandings arose which brought the scheme to nothing, and the line was not constructed until after Confederation.

² On July 1, 1850, a convention was held at Portland, Maine, to further the scheme of uniting Portland by rail with the Provinces of New Brunswick and Nova Scotia.

bestow. Let us then, my Lord, at least feel, that if thus excluded, we have but to present a claim or a case worthy of consideration, to have it dealt with in a fair and even generous spirit.

The warrior of old, whose place was vacant in the pageant, was yet present in the hearts of the people. So let it be with us, my Lord. If the seats which many whom I have left behind me, could occupy with honour to themselves, and advantage to the empire, are still vacant in the national councils, let Nova Scotia at least be consoled by the reflection that her past history pleads for her on every fitting occasion.

I have, &c.

(signed) JOSEPH HOWE.

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DESPATCH FROM HEAD TO GREY¹

(C.O. 188/113: P.R.O.)

Government House
Fredericton N. B.
November 6. 1850.

MY LORD,

I think the despatch on the subject of the vacancy in the post of Chief Justice of New Brunswick which goes by this mail will bring under your Lordship's notice certain difficulties in the working of what is called Responsible Government in this Colony which it may be desirable that I should discuss more at length in a separate communication.

The notion which the people here attach to the words Responsible

Delegates from these two Governments attended, and many leading business men of the United States and Canada also. Behind the proposal lay the desire of the American promoters to quicken steam communication with Europe by a service from Halifax.

¹ Sir Edmund Walker Head, Fellow of Merton from 1830 to 1837 and afterwards for many years a Poor Law Commissioner, was Lieutenant-Governor of New Brunswick from 1847 to 1854, and from 1854 to 1861 Governor-General of Canada. He was a man of high scholastic attainments and vigorous mind. In Canada, where conditions were different from those of New Brunswick, he made no attempt to interfere with the ascendancy of John A. Macdonald, who was his close personal friend.

At the meeting of the Executive Council which occasioned this despatch, six of the nine members—L. A. Wilmot among them—had signed a memorandum recommending that advantage should be taken of the vacancy in the Chief Justiceship to make a reduction in the number of judges. Wilmot changed his mind the following day; and Head recommended that no reduction should be made, one of the puisne judges promoted, and Wilmot as Attorney-General offered the vacant judgeship. This was what was done; but though the Executive Council had been divided, and the appointment was the most natural that could have been made, the cry of Downing Street influence was raised and the Executive Council sent an emphatic protest to England.

Government is as yet a very vague one, and they do not clearly understand the conditions necessary for securing that which they conceive these words to imply.

It is evident enough that in order to imitate in the smallest degree the working of the English system, a certain amount of patronage and power must be in the hands of the Government of the time—It must be worth the while of competent men to attend to the business of the public, rather than to their own affairs and to be ready at any moment to assist the Lieutenant Governor with their advice and countenance—These men, too, must be entrusted with a certain discretion to be exercised under the control of the Representative Body.

Now I have an Executive Council consisting of nine persons—of these one resides at Miramichi, 100 miles from Fredericton—one at Dorchester, 170 Miles from Fredericton—one at Shediac, about the same distance—one at St. Stephens 70 or 80 miles off, and one at St. John 65 Miles from the seat of Government—No one of these five gentlemen holds any office as a Member of the Government—or receives any emolument, as belonging to the Executive Council, beyond his expenses.

At Fredericton there are usually three public officers—The Provincial Secretary, the Attorney General, and the Solicitor General, besides Mr. Fisher, who holds no office.¹

Your Lordship knows that five persons are demanded to make a 'quorum' of the Council. It requires, therefore, a good deal of consideration to fix times for their Meeting, which may not interfere with their own affairs, and with the various courts sitting from time to time in the different Counties. When the council have met they remain together perhaps two days, but the unpaid members who come from a distance are always in a hurry to return home, and there is the greatest difficulty in securing full and fair discussion of any complicated business. The three paid members at Fredericton are, as a general rule, pretty well occupied with the ordinary routine of their duties, and owing to an arrangement which I found already made when I arrived, the office of Clerk to the Executive Council is discharged by two head clerks belonging to the offices of Provincial Secretary and Surveyor General respectively, and who have other duties.

The Surveyor General's place is one of those which ought to fall to the share of a member of the Government for the time being, but as Your Lordship knows, the House of Assembly, while eager for Responsible Government, are reluctant to vote Mr. Baillie a

¹ Charles Fisher had been the closest associate of Wilmot in the advocacy of responsible government. Unlike the rest of the Executive he made the appointment of Wilmot a question of principle and resigned. For a few years after he led the New Brunswick Liberals, but the primacy gradually passed to S. L. Tilley.

pension and thus place at the disposal of the Government this most necessary office—In fact, the business of the Surveyor General is intimately connected with the every day duties of the Lieut: Governor and Council, but instead of having an officer whom I can trust implicitly, or in whom my Council can repose confidence, I have to work with one who, to a certain extent, is often thwarting us—This was most clearly seen when he was a member of the House of Assembly, which he has now ceased to be.

To illustrate this condition of things by what has just occurred—My Council meet and deliberate on the approaching vacancy in the office of Chief Justice—They come to a sort of conclusion which they embody in a very short memorandum—They give no reasons, and make no report at length, but the unpaid members go off to their own homes, leaving at Fredericton four members of their body, each of whom, I will venture to assert positively, has, on the whole question before the Council, a different opinion from the others—I ask the Provincial Secretary, who agreed with the majority of the Council, for their reasons, and he tells me he cannot undertake to furnish them for his absent colleagues.

Now I am stating these things not because I expect your Lordship to help me out of difficulties which are perfectly unavoidable at present, but for the sake of shewing how very imperfect my means are of carrying out in any systematic way what people here understand by 'Responsible Government'. I can only advance towards the principle by asking advice when I can get it, and by communicating such advice with my own comments upon it to Your Lordship when the case may require it.

An exact counterpart of the English system of Parliamentary Government is perhaps scarcely possible in a community of 200,000 people, separated by long tracts of wilderness and Forest—The first conditions, however, for getting nearer to the principle at which we aim, are in this Province—

1st. Such offices or emoluments in the hands of a majority of the members of a Government as will make it worth their while to act continuously and zealously for the public—

2nd. Such a control over the introduction of money votes as will enable a Government to take the responsibility of proposing to the House of Assembly, or of rejecting appropriations to be made, and thus make the Executive Council answerable for some correspondence between income and expenditure and enable them to suggest such measures as may appear for the benefit of the Community.

These propositions are sufficiently obvious in themselves but the necessity of such conditions is made still more clear by the extract from a despatch of Lord Sydenham to Lord John Russell quoted by Your Lordship in your despatch of 31st of March 1847,

addressed to Sir John Harvey, in which extract the duties of an Executive Council are most ably pointed out.¹

I repeat, My Lord, that I do not write this despatch with any expectation that Your Lordship can help me, nor do I complain that I have difficulties to contend with—Such difficulties must, I am well aware, come in some shape or other—I only hope Your Lordship, understanding what the position of things in New Brunswick is, will give me the advantage of a favourable construction—In the mean time, I shall steadily go on as well as I can under existing circumstances endeavouring always to develope in this Colony as much self-government as is compatible with its relation to the Mother country, and with the welfare of the People at large, understood in its widest sense.

I have, etc.

(signed)

EDMUND HEAD.

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DESPATCH FROM GREY TO BANNERMAN [EXTRACTS]²

(C.O. 227/10: P.R.O.)

Downing Street

31 Jany. 51

SIR,

. . . The late Lieut. Governor gave a right interpretation of the views of H.M.'s Govt. in his communications with the Assembly. He was not authorized by my former Despatches to concede to the Assembly Responsible Government, or to enter into any negotiations with that Body respecting the surrender of H.M.'s Crown Revenues of which that concession should be the basis. It was my wish that the feelings of the Community should be more fully ascertained, its state of preparation for so important an Advance in Social progress more carefully measured before the step itself was taken.

The appeal which he made to the People at large by a dissolution, altho not made with this particular object, drew forth a much stronger expression of opinion upon it than had ever previously been elicited. It appears that a large majority of the Assembly have now pronounced

¹ Sir John Harvey was Lieutenant-Governor of Nova Scotia from 1846 to 1852. He had previously been Lieutenant-Governor successively of Prince Edward Island, New Brunswick, and Newfoundland. In the despatch to which Sir E. Head refers (printed in Kennedy, *op. cit.*, pp. 573-7) Lord Grey supplements his earlier despatch of Nov. 3, 1846, and gives in some detail what he conceives to be the main principles of responsible government as applicable to a colony.

² Sir Alexander Bannerman was appointed Lieutenant-Governor of Prince Edward Island at the beginning of 1851 on the death of Sir Donald Campbell, who had held the post since 1847. Sir A. Bannerman had been a merchant, shipowner, &c., in Aberdeen. He was afterwards Governor of the Bahamas and of Newfoundland.

themselves in favor of this measure, and this under circumstances which give every reason for concluding that their decision is no expression of temporary feeling, but of the general and deliberate wish of the Community.

I do not think that H.M.'s Govt. would act consistently with the principles which they have uniformly maintained on this subject if they were to resist this determination. My own opinion I have already Communicated to Sir D. Campbell, and I cannot withdraw the expression of it. I think that what is termed Responsible Govt. being in fact the admission of the persons who enjoy the confidence of the popular Branch of the Legislature to a large share of the Executive power, is more likely to be attended with success after a long season of preparation, and in a wealthy and populous Colony, than after the short preparation and with a population so little advanced in numbers and wealth as that of Prince Edward Island. But no one will rejoice more than myself if the result of the change of system should prove more satisfactory than I anticipate. That the Colony may advance in prosperity under the new System even more rapidly than it has hitherto done, and that this prosperity may be attended with the blessings of Social order and of harmony among the various Classes of the people is the sincerest wish of Her Majesty and Her Confidential Advisers.

You are therefore authorized (without entering into particular details) to reconstruct the Executive Council in such a manner as to include those who possess the Confidence of the Assembly, and also to surrender to the Assembly the disposal of H.M.'s Crown Revenues, if the Legislature will consent to pass an Act embodying the terms which I will presently propose. . . .

I have, &c.

(signed) GREY.

42

DECLARATION AND REMONSTRANCE OF THE LEGISLATIVE COUNCIL OF NEW SOUTH WALES

(P.P., 1852, xxxiv.)

To His Excellency, Sir Charles Augustus Fitzroy, Knight Companion of the Royal Hanoverian Guelphic Order, Captain-General and Governor-in-Chief of the territory of New South Wales and its dependencies, and Vice-Admiral of the same, etc., etc.

May it please Your Excellency,

We, Her Majesty's most dutiful and loyal subjects, the Members of the Legislative Council of New South Wales, in Council assembled, beg respectfully to forward to your Excellency for transmission to the Right Honourable the Secretary of State for the Colonies, the

following declaration and remonstrance against the New Constitution Act, 13 and 14 Vict., cap. 59, this day adopted by the Council.

We, the Legislative Council of New South Wales, in Council assembled, feel it to be a duty which we owe to ourselves, to our constituents, and to posterity, before we give place to the New Legislature established by the 13 and 14 Vict., cap. 59, to record our deep disappointment and dissatisfaction at the constitution conferred by that Act on this Colony. After the reiterated reports, resolutions, addresses, and petitions, which have proceeded from us during the whole course of our Legislative career, against the schedules appended to the 5 and 6 Vict., cap. 76, and the appropriations of our ordinary revenue under the sole authority of Parliament—against the administration of our waste lands and our territorial revenue thence arising—against the withholding of the customs department from our control—against the dispensation of the patronage of the colony at the dictation of the Minister for the Colonies—and against the vote reserved and exercised by the same minister, in the name of the Crown, in matters of local Legislation—we feel that we had a right to expect that these undoubted grievances would have been redressed by the 13 and 14 Vict., cap. 59, or that power to redress them would have been conferred on the constituent bodies thereby created, with the avowed intention of establishing an authority more competent than Parliament itself to frame suitable constitutions for the whole group of the Australian Colonies. These our reasonable expectations have been utterly frustrated. The schedules, instead of being abolished, have been increased. The powers of altering the appropriations in these schedules, conferred on the Colonial Legislature by this Act, limited as these powers are, have been in effect nullified by the subsequent instructions of the Colonial Minister. The exploded fallacies of the Wakefield theory are still clung to; the pernicious Land Sales Act (5 and 6 Vict., cap. 36)¹ is still enforced, and thousands of our fellow subjects (in consequence of the undue price put by that mischievous and impolitic enactment upon our waste lands, in defiance of the precedents of the United States, of Canada, and the other North American Colonies, and even of the neighbouring colony of the Cape of Good Hope) are annually diverted from our shores, and thus forced, against their will, to seek a home for themselves and their children in the backwoods of America. Nor is this all. Our territorial revenue, diminished as it is by this most mistaken policy, is in a great measure confined to the introduction among us of a people unsuited to our wants, and in many instances the outpourings of the poorhouses and unions of the United Kingdom, instead of being applied in directing to this Colony a stream of vigorous and efficient labour, calculated to elevate the character of our industrial population. The bestowal of office among

¹ For the Land Sales Act, see below, Section II, No. 11.

us, with but partial exception, is still exercised by or at the nomination of the Colonial Minister, and without any reference to the just claims of the colonists, as if the colony itself were but the fief of that Minister. The salaries of the officers of the customs, and all other departments of the Government included in the schedules, are placed beyond our control; and the only result of this new enactment introduced into Parliament by the Prime Minister himself with the declared intention of conferring upon us enlarged powers of self-government and treating us at last as an integral portion of the Empire, is, that all the material powers exercised for centuries by the House of Commons are still withheld from us; that our loyalty and desire for the maintenance of order and good government are so far distrusted that we are not permitted to vote our own civil list, lest it might prove inadequate to the requirements of the public service; that our waste lands and our territorial revenues, for which Her Majesty is but a trustee, instead of being spontaneously surrendered, as the equivalent of such civil list, is still reserved, to the great detriment of all classes of Her Majesty's subjects, in order to swell the patronage and power of the ministers of the Crown; that whilst in defiance of the Declaratory Act (18 Geo. III., cap. 12, sec. 1), which has hitherto been considered the Magna Charta of the representative rights of all the British Plantations, a large amount of our public revenue is thus levied and appropriated by the authority of Parliament, we have not even the consolation of seeing that portion of it which is applied to the payment of the salaries of our public officers distributed as it ought to be among the settled inhabitants; and that, as a fit climax to this system of misrule, we are not allowed to exercise the most ordinary legislation which is not subject to the veto of the Colonial Minister.

Thus circumstanced, we feel that, on the eve of the dissolution of this Council, and as the closing act of our Legislative existence, no other course is open to us but to enter on our own journals our declaration, protest, and remonstrance, as well against the Act of Parliament (13 and 14 Vict., cap. 59) as against the instructions of the Minister by which the small power of retrenchment that Act confers on the Colonial Legislature has been thus overridden, and to bequeath the redress of the grievances which we have been unable to effect by constitutional means to the Legislative Council by which we are about to be succeeded.

We, the Legislative Council of New South Wales, do accordingly solemnly protest, insist, and declare as follows:—

- 1st. That the Imperial Parliament has not, nor of any right ought to have any power to tax the people of this colony, or to appropriate any of the monies levied by authority of the Colonial Legislature; that this power can only be lawfully exercised by the Colonial Legislature; and that the Imperial Parliament has

solemnly disclaimed this power by 18 Geo. III., cap. 12, sec. 1, which Act remains unrepealed;

2nd. That the revenue arising from the public lands, derived as it is mainly from the value imparted to them by the labour and capital of the people of this Colony, is as much their property as the ordinary revenue, and ought therefore to be subject only to the like control and appropriation;

3rd. That the Customs and all other departments should be subject to the direct supervision and control of the Colonial Legislature,¹ which should have the appropriation of the gross revenues of the Colony, from whatever source arising, and, as a necessary incident to this authority, the regulation of the salaries of all Colonial Officers;

4th. That offices of trust and emolument should be conferred only on the settled inhabitants, the office of Governor alone excepted; that this officer should be appointed and paid by the Crown; and that the whole patronage of the Colony should be vested in him and the Executive Council, unfettered by instructions from the Minister for the Colonies;

5th. That plenary powers of legislation should be conferred upon and exercised by the Colonial Legislature for the time being, and that no bills should be reserved for the signification of Her Majesty's pleasure, unless they affect the prerogatives of the Crown or the general interests of the Empire.

Solemnly protesting against these wrongs, and declaring and insisting upon these our undoubted rights, we leave the redress of the one, and the assertion of the other to the people whom we represent, and the Legislature which shall follow us.

(signed)

CHARLES NICHOLSON.
Speaker.

Legislative Council Chamber, Sydney,
May 1st, 1851.

¹ So long as the old Navigation Laws had been in force, the Customs Department throughout the Empire had been a separate service controlled by the Treasury. Lord Grey fully realized that the repeal of the laws in 1849 gave the colonists a right to expect the transfer of control to colonial hands; and, as he pointed out in his reply to this Remonstrance, a circular despatch of August 8, 1850, had directed arrangements to be made accordingly, though it was not until Oct. 1, 1852, that the actual transfer took place in New South Wales. Of course, until responsible government came into operation, the transfer was not to the control of the Legislative Council but to that of the Governor.

DESPATCH FROM EARL GREY TO SIR C. FITZROY

(January 23, 1852) [EXTRACT]

(P.P., 1852, xxxiv.)

With regard to the last clause of the protest, which claims what are termed plenary powers for the local Legislature, it is scarcely necessary to remark, that although the Council naturally confine their declaration to the case of the province which they have represented, it is impossible for me to notice it in answer, except as applying generally to the colonial possessions of the British Crown. For the constitutional rule or principle, against which protest is here made, is equally in force in every colony, from the comparatively old and numerous communities in North America down to the smallest settlement enjoying a separate Legislature. It could scarcely be altered in one colony without a general change of system, and the introduction of so vast a change would require far more practical and pressing grounds to justify it than what I must term a theoretical preference of some different and untried scheme.

It is not denied that the Governor of a colony, as representing the Crown, must necessarily be a party to all legislation; and there would be obvious objections to placing in the hands of even the ablest Governor the power of binding the Crown from his acceptance of acts in necessary ignorance of the views which the Crown, through its advisers charged with the superintendence of the general interests of the empire, may entertain. This I believe to be the main ground on which this power has been generally retained and exercised by the Crown from the earliest periods of colonial history; nor does it seem to me that it could be abandoned with safety to the permanence of the connexion between the mother country and her colonies.

I am satisfied; at all events, that they are doing little service to the cause of good government who urge the adoption of a change of such magnitude as this, unless they are prepared with a well-considered substitute for the system which they propose to abandon. I am aware of no substitutes having been prepared which in my opinion answers this description. The only one which I have seen suggested,¹ and to which I believe the Legislative Council to refer, though I am not certain of their meaning, is this, that subjects of legislation should be divided into local and imperial; that on the former the Governor should give or withhold the Royal assent, without further confirmation from the Crown; that on the latter, the local Legislature should have no power at all; its acts or any portions of them affecting these subjects being absolutely null and void; and the heads so

¹ The scheme which Lord Grey had 'seen suggested' was doubtless the one put forward by Sir W. Molesworth in 1850 in the debates on the Australian Colonies Government Bill. It was advocated also by Wakefield.

reserved are of course numerous, including amongst others the very extensive one of the prerogative of the Crown.

I am unwilling to enter on a subject merely controversial, and which is not fully placed before me with the arguments of those who advocate the innovation. But I cannot refrain from observing on the practical inconveniences which would seem necessarily to attend a system under which large subjects, and many of them very difficult to define, would be absolutely withdrawn from the power of the local Legislature; so that they would be at once unable to legislate at all on many matters on which it is most desirable that they should legislate, subject to the control of the Crown, and at the same time under constant uncertainty whether Acts passed with strictly constitutional intentions might not be invalid through some inadvertent infringement of the limits of their authority,—limits which could ultimately only be defined and preserved through the uncertain process of judicial interpretation in courts of law. I say nothing of the extreme difficulty of constituting a tribunal fit to judge of the validity of such Acts, or the certainty that its decisions would soon be felt as far greater hardships than the refusal of the Crown through its ministers to allow an Act, which refusal further consideration may at all times change or modify.

If, indeed, this power of the Crown were complained of as practically a grievance, the representations of the Council would have great additional weight. But no such complaint appears to be made, nor do I see how it could be. From the information afforded by the records of this office, it seems that not more than seven Acts of the Legislature of New South Wales have been disallowed since the commencement of representative institutions, and about the same number returned for the insertion of amendments before Her Majesty's confirmation could be given; and of the trifling number thus interfered with, nearly all in the first three sessions, when the experiment was new, several were obviously such Acts as the local Legislature, under the proposed division of subjects which I have above adverted to would have had no right to pass at all.

On the other hand, a very slight examination of the Acts, more than 200 in number, which have received the Royal confirmation, will probably show that many of them would have been either wholly or partially in excess of like powers of the Legislature, and absolutely void, if such a division of authorities had existed. And this shows the practical convenience of the law as it now stands; for the Council of New South Wales has legislated, and will continue to legislate, without hindrance, on many subjects either of Imperial cognizance, or touching the prerogative, to the great advantage of the community; because the interests of the Crown and the Empire are sufficiently guarded by the power of disallowance possessed by the Crown, rarely as it is found necessary to exercise it.

I have thus explained to you the views of Her Majesty's Government on all the principal heads of the declaration of the late Legislative Council; and I trust that, however this explanation may be received by those who as members of that body adopted the declaration, their constituents will be more disposed to weigh the considerations here advanced, and to endeavour to the best of their power to mitigate the opposition of opinions, and conciliate jarring interests, than to adopt, without demur, the sweeping conclusions which that declaration advocates.

At all events I feel certain, that on reflection they will acquit Her Majesty's Government of any intention to inflict on them a system of misrule and oppression. We have had the interests of the local community and of the empire, which, rightly considered, are the same, solely in view; and to attribute to us other motives would be as unjust as it would be on my part to impute the language of this declaration, because I do not agree in it, to a spirit of faction or resentment. Whatever may be the censure in which the late Council may have thought fit to have indulged towards myself, I cannot be guilty of such injustice towards them. Amidst the deep satisfaction with which I have watched of late years the extraordinary progress of New South Wales in nearly all that constitutes the social and material welfare of a community, I have never ceased to appreciate the manner in which its Legislature has contributed to that advance by the zealous and constant discharge of its duty to its constituents; and it is my sincere hope that the now separate Legislatures, using with their best abilities the powers which the Act now under discussion has conferred on them, will follow in that career of improvement which their predecessors have marked out for them.

I have, &c.

(signed) GREY.

44

DESPATCH FROM SIR GEORGE GREY TO EARL GREY

(August 30, 1851) [EXTRACTS]

(*P.P.*, 1852, xxxv.)

In the middle, as in the northern island, no overland communication, except for foot passengers, as yet exists between the different settlements. For in that island, where mountain ranges do not interpose as an almost insurmountable barrier between the settlements, the wide, rapid, and dangerous rivers offer at present a no less serious difficulty in the way of any continuous intercourse between the various towns. The inconsiderable native population in the middle island may be said to be principally located in the vicinity of the several European settlements.

In the two islands there exist six principal towns,¹ five of which are situated on good harbours, and each of these form emporiums for considerable colonies in their neighbourhood.

These five colonies were settled at different times, each upon a totally distinct plan of colonization, and by persons who proceeded direct to their respective colony, either from Great Britain or from the neighbouring Australian colonies, and who rarely passed through any other New Zealand settlement previously to reaching the colony which they now inhabit; and who, except in a few instances, rarely travel from their own colony to any neighbouring settlement.

Each of these chief towns carries on an independent trade with Great Britain and with the neighbouring Australian colonies, and hardly any interchange of commerce takes place between them, since they at present all produce nearly the same commodities, and require the same kind of supplies, which they naturally seek at the cheapest mart, whilst the cost of transport from a port in the Australian colonies but in a trifling degree, if at all, exceeds the corresponding charges from a port in New Zealand. There is indeed already a considerable and increasing coasting trade in New Zealand, which in some parts is chiefly carried on in vessels owned and manned by Maories; but it consists rather of a trade between various small native and European settlements, and that one of the principal European towns from which they derive their supplies, and with which they are immediately connected, than of any trade between the principal colonies themselves.

I think it must be clear that between colonies so constituted little of what may be termed community of interest can be said to exist. There is no general capital or mart to which all merchants and persons having extensive business at all times resort. There is no one central town for all the islands in which the courts of law hold their sittings. Individuals who inhabit one colony rarely have property or agents in another. Personal acquaintance or intercourse between the inhabitants of the various settlements can be scarcely said to exist.

Any attempt therefore to form a General Legislature for such a group of colonies which should at present annually or even frequently assemble, and which should be so composed as fairly to represent the various interests of all parts of this country, must therefore, I think, fail, because there are as yet no persons in these islands who have the means or leisure to enable them to abandon their own affairs each year for the purpose of resorting to another colony there to discharge their senatorial duties. If even a payment was made to such persons to remunerate them for their expenses whilst travelling and absent from home, they still could not afford to neglect their own affairs during so long an interval of time. . . .

¹ The 'six principal towns'—many of them were, in fact, small villages—were Auckland, New Plymouth, Wellington, Nelson, Christchurch, and Dunedin.

The same causes which appear to me to render it impossible at present to assemble frequently a General Legislature which should at all fairly represent the interests of all the settlements, seem also, in as far as I can judge, to be fatal to the adoption in these islands of the municipal system alone, without some other peculiar institutions being adopted in aid of that system which would be adapted to the unusual state of circumstances which prevail in this country.

Because such municipalities can only exist concurrently with a Legislature which frequently meets. For there is nothing connected with the offices of mayor or alderman of the corporation of a small colonial town which would induce the ablest and leading men of the country to strive to obtain such offices. Under a system of extended municipalities with enlarged powers such corporations would, however, compose in fact not only the legislative body, but also the executive government of large districts of country. It would therefore certainly be a great oversight, and an unwise policy, thus by indirect means to exclude from the higher legislative and executive offices the fittest and ablest men that the country affords. The frequent sittings of a municipal body would also, in a country where every man is engaged in some active occupation, prevent all those who did not live in the town or its immediate neighbourhood from becoming members of such municipal bodies; hence a large portion of the population and of the country would, under such a system, be virtually unrepresented and their requirements unknown. The careless manner in which municipal bodies enact their laws render them also little qualified for the offices of higher legislation for extensive districts of country; and the frequency and permanency of their sittings would in a great degree remove them from that watchful control of public opinion which is always eagerly concentrated on the proceedings of a legislative body which has only one annual sitting, extending over no very great length of time. Moreover, corporate bodies, exercising the usual and rather extended municipal powers, are already required for several towns in New Zealand. I think, therefore, that the municipal system should be here carefully preserved, and that it should be so preserved in its integrity for municipal purposes, and that its vitality and very form of being should not be destroyed, by producing it in a shape which, possessing no distinctive character, no clearly ascertained line of duties, would command little or no respect, would have no precedents to guide it, would, I am sure, in practice prove entirely unsatisfactory and almost useless, and would thus, after a short existence, during which great discontent would be generated in the country, and its prosperity and progress would be much retarded, leave to Great Britain the task of again framing a constitution for this country, which task would then be found a far more difficult one than it would be at present. . . .

If such a Legislative Council as I suggest is given to each province,

and the members of it receive the payment proposed for their attendance, then annual sessions might be held at the capital of the province without inconvenience, and each of these Councils would possess the most ample, in fact all requisite, powers of legislation for the regulation of all questions that could arise within a province; and as the whole of the local revenues (except that portion which is required for general purposes, including the civil list,) is placed at the disposal of such Legislative bodies, there can be no doubt that the resources of the country would be fairly and equitably applied throughout its whole extent.

Legislative Councils of this nature appear to me to present great advantages in a country circumstanced as New Zealand is. I will name a few of these advantages:

Firstly.—They secure, in the only manner which I believe to be practicable in New Zealand, real local self-government throughout every part of these islands.

Secondly.—If any questions of an exciting kind should arise between the European and native populations, the majority of the provinces, from the small number of natives in them, would have no great personal interest in such questions. Their inhabitants and legislatures could therefore form a dispassionate and unprejudiced opinion on such questions. Hence the general Government, in pursuing such line of policy towards the natives as justice and humanity might demand, could be certain that it would not be compelled to yield to momentary passions, prejudice, or self-interest; because there would be a large number of persons, and several regularly constituted legislative bodies, on whom it could rely for support. On the other hand, if the General Government, weakly yielding to public clamour and prejudice, was about to give effect to the momentary merely local popular will of any province by committing some act of injustice towards the natives, regularly constituted legislative bodies would be in existence to give expression to their opinion, and thus to check its action.

Thirdly.—The constitution of such legislative bodies, which possessed such extensive powers of local legislation, would, for at least several years to come, render the frequent assembling of the General Legislature entirely unnecessary.

Fourthly.—The powers of legislation of such Councils being merely of a local nature, and being restricted in reference to general matters, a great difficulty is avoided; inasmuch as Ordinances passed by them need not be referred home for the Royal assent, but might, as is provided in the enclosed Ordinance, be either allowed or disallowed by the Governor-in-Chief. The question therefore which relates to the transmission of all colonial laws

for the allowance or disallowance of the Crown would be much narrowed; indeed it could only arise in reference to laws passed by the General Legislature; and as that body would so seldom meet, and the subjects especially reserved for its legislation are so few, the probability is that it might never be thought of in as far as relates to New Zealand.

Fifthly.—Such Provincial Legislative Councils would greatly increase the efficiency of the municipalities, by forming the proper bond of union between the several boroughs of any one province, which would then all be fitted as it were into one body politic, the action of the several parts and of the whole of which would be in entire harmony.

. . . Assuming it to be admitted that a General Legislature should be constituted for New Zealand, I shall proceed to point out how I think that body should be composed.

I think it should consist of—

A Governor-in-Chief, appointed in the usual manner by the Crown: of—

A Legislative Council, elected in the manner recently suggested to me by your Lordship, that is, by the Provincial Councils, such a number of votes being allowed to each member of these Councils as to enable a minority to be at least to some extent represented:¹ and, thirdly, of—

A Representative Assembly, to be elected by voters, with exactly the same qualification as is required to be possessed by those who vote for the return of members to the Provincial Council. I think, as it is proposed that the General Legislature should be so rarely assembled, it would be requisite that the members, both of the Legislative Council and of the House of Representatives, should be elected for a period of five years. . . .

The whole of these islands are now in a state of complete tranquillity; every settlement is in a prosperous condition; the native race are loyal, contented, and daily increasing in wealth, and the Local Government now possesses very considerable influence over them. I also believe the proposed form of institutions could gradually be introduced in such a manner that not the slightest shock or change in the condition of the colony would be experienced. Probably, therefore, no more suitable moment could be chosen for giving a fitting constitution to this country; and I think that if The Queen is advised to avail herself of this opportunity, Her Majesty will have the happiness of conferring upon Her subjects in this country, a boon which will be regarded by them with lasting gratitude. . . .

¹ In a confidential despatch dated February 19, 1851, Lord Grey had made this suggestion, basing it upon the conclusions of the Committee of the Privy Council on the Cape Constitution, for which he had himself been mainly responsible, in favour of indirect election of the Upper Chamber.

NEW ZEALAND CONSTITUTION ACT, 1852 [EXTRACTS]
(15 & 16 *Vict. cap.* LXXII.)

II. The following Provinces are hereby established in New Zealand; namely, Auckland, New Plymouth, Wellington, Nelson, Canterbury, and Otago;¹ and the Limits of such several Provinces shall be fixed by Proclamation by the Governor as soon as conveniently may be after the Proclamation of this Act in New Zealand.

III. For each of the said Provinces hereby established, and for every Province hereafter to be established as herein-after provided, there shall be a Superintendent and a Provincial Council, and the Provincial Council of each of the said Provinces hereby established shall consist of such Number of Members, not less than Nine, as the Governor shall by Proclamation direct and appoint.

IV. Upon or before the Issue of Writs for the First Election of Members of the Provincial Council for any Province established by or under this Act, the Persons duly qualified in each of the said Provinces to elect Members for the Provincial Councils as herein-after mentioned shall elect a Superintendent of such Province;² and on the Termination of such Council by Expiration of the Period herein-after fixed for its Continuance, or by the previous Dissolution thereof, the Persons qualified as aforesaid shall elect the same or some other Person to be Superintendent, and so on from Time to Time; and every such Superintendent shall hold his Office until the Election of his Successor: Provided always, that it shall be lawful for the Governor of New Zealand, on behalf of Her Majesty, to disallow any such Election; and if such Disallowance be signified by the Governor, under the Seal of New Zealand, to the Speaker of such Council, at any Time within Three Months after such Election, the Office of Superintendent shall become vacant; and on any Vacancy occasioned by such Disallowance, or by the Death or Resignation of the Superintendent (such Resignation being accepted by the Governor on behalf of Her Majesty), a new Election shall in like Manner take place: Provided farther, that at any Time during the Continuance of the Office of any such Superintendent it shall be lawful for Her Majesty to remove him from such Office, on receiving an Address signed by the Majority of the Members of such Provincial

¹ For some reason or other Sir George Grey had not recommended the application of the provincial principle at New Plymouth: possibly on account of the presence of the natives in large numbers he proposed to include it in the Province of Auckland.

² The draft Bill proposed by Earl Grey had left the nomination of Superintendents in the hands of the Crown. Sir John Pakington adopted this proposal but was induced to make an alteration in Committee, under the erroneous impression that the duties of Superintendents would in practice approximate to those of mayors of towns. The same impression had led him to consent to make the Councils wholly elective.

Council praying for such Removal; and thereupon the like Proceedings shall be had as in the Case of any such Vacancy as above mentioned.

VI. Every Person within any Province hereby established or hereafter to be established who shall be legally qualified as an Elector, and duly registered as such, shall be qualified to be elected a Member of the Provincial Council thereof, or to be elected Superintendent thereof: Provided always, that it shall not be necessary that he reside or possess the Qualification in the particular District for which he may be elected to serve as a Member.

VII. The Members of every such Council shall be chosen by the Votes of the Inhabitants of the Province who may be qualified as herein-after mentioned; that is to say, every Man of the Age of Twenty-one Years or upwards having a Freehold Estate in possession situate within the District for which the Vote is to be given of the clear Value of Fifty Pounds above all Charges and Incumbrances, and of or to which he has been seised or entitled, either at Law or in Equity, for at least Six Calendar Months next before the last Registration of Electors, or having a Leasehold Estate in possession situate within such District, of the clear annual Value of Ten Pounds, held upon a Lease which at the Time of such Registration shall not have less than Three Years to run, or having a Leasehold Estate so situate, and of such Value as aforesaid, of which he has been in possession for Three Years or upwards next before such Registration, or being a Householder within such District occupying a Tenement within the Limits of a Town (to be proclaimed as such by the Governor for the Purposes of this Act) of the clear annual Value of Ten Pounds, or without the Limits of a Town of the clear annual Value of Five Pounds, and having resided therein Six Calendar Months next before such Registration as aforesaid, shall, if duly registered, be entitled to vote at the Election of a Member or Members for the District.

XIII. Every Provincial Council shall continue for the Period of Four Years from the Day of the Return of the Writs for choosing the same, and no longer: Provided always, that it shall be lawful for the Governor, by Proclamation or otherwise, sooner to dissolve the same, whenever he shall deem it expedient so to do.¹

XVI. It shall be lawful for the Superintendent to prorogue such Council from Time to Time, whenever he shall deem it expedient so to do.

XVII. Provided always, That there shall be a Session of every Provincial Council once at least in every Year. . . .

XVIII. It shall be lawful for the Superintendent of each Province, with the Advice and Consent of the Provincial Council thereof, to

¹ It became the constitutional practice that the Provincial Councils should be dissolved by the Governor only at the joint request of the Superintendent and Council.

make and ordain all such Laws and Ordinances (except and subject as herein-after mentioned) as may be required for the Peace, Order, and good Government of such Province, provided that the same be not repugnant to the Law of England.

XIX. It shall not be lawful for the Superintendent and Provincial Council to make or ordain any Law or Ordinance for any of the Purposes herein-after mentioned;¹ (that is to say,)

1. The Imposition or Regulation of Duties of Customs to be imposed on the Importation or Exportation of any Goods at any Port or Place in the Province;
2. The Establishment or Abolition of any Court of Judicature of Civil or Criminal Jurisdiction, except Courts for trying and punishing such Offences as by the Law of New Zealand are or may be made punishable in a summary Way, or altering the Constitution, Jurisdiction, or Practice of any such Court, except as aforesaid:
3. Regulating any of the current Coin, or the Issue of any Bills, Notes, or other Paper Currency:
4. Regulating the Weights and Measures to be used in the Province or in any Part thereof:
5. Regulating the Post Offices and the Carriage of Letters within the Province:
6. Establishing, altering, or repealing Laws relating to Bankruptcy or Insolvency.
7. The Erection and Maintenance of Beacons and Lighthouses on the Coast.
8. The Imposition of any Dues or other Charges on Shipping at any Port or Harbour in the Province:
9. Regulating Marriages:
10. Affecting Lands of the Crown, or Lands to which the Title of the aboriginal native Owners has never been extinguished:
11. Inflicting any Disabilities or Restrictions on Persons of the Native Race to which Persons of European Birth or Descent would not also be subjected:
12. Altering in any way the Criminal Law of New Zealand, except so far as relates to the Trial and Punishment of such Offences as are now or may by the Criminal Law of New Zealand be punishable in a summary Way as aforesaid:
13. Regulating the Course of Inheritance of Real or Personal Property, or affecting the Law relating to Wills.

XXV. It shall not be lawful for any Provincial Council to pass, or for the Superintendent to assent to, any Bill appropriating any Money

¹ It is worth noting that, whereas in the Act of 1846 the General Assembly had been given power to legislate *only* on certain specified subjects, here the Assembly was given concurrent powers over the whole field of legislation and on these specified subjects the Provincial Councils were entirely restricted from legislating.

to the Public Service, unless the Superintendent shall first have recommended to the Council to make Provision for the specific Service to which such Money is to be appropriated; and no such Money shall be issued or be made issuable, except by Warrants to be granted by the Superintendent.

XXVI. It shall be lawful for the Superintendent to transmit to the Provincial Council, for their Consideration, the Drafts of any such Laws or Ordinances as it may appear to him desirable to introduce, and all such Drafts shall be taken into consideration in such convenient Manner as in and by such Rules and Orders as aforesaid shall be in that Behalf provided.

XXVII. Every Bill passed by the Provincial Council shall be presented to the Superintendent for the Governor's Assent, and the Superintendent shall declare, according to his Discretion, (but subject nevertheless to the Provisions herein contained and to such Instructions as may from Time to Time be given him by the Governor,) that he assents to such Bill on behalf of the Governor, or that he withholds the Assent of the Governor, or that he reserves such Bill for the Signification of the Governor's Pleasure thereon; provided always that it shall and may be lawful for the Superintendent, before declaring his Pleasure in regard to any Bill so presented to him, to make such Amendments in such Bill as he thinks needful or expedient, and to return such Bill with such Amendments to such Council, and the Consideration of such Amendments by such Council shall take place in such convenient Manner as shall in and by the Rules and Orders aforesaid be in that Behalf provided;¹ provided also, that all Bills altering or affecting the Extent of the several Electoral Districts which shall be represented in the Provincial Council, or establishing new or other such Electoral Districts, or altering the Number of the Members of such Council to be chosen by the said Districts respectively, or altering the Number of the Members of such Council, or altering the Limits of any Town or establishing any new Town, shall be so reserved as aforesaid.

XXVIII. Whenever any Bill shall have been assented to by the Superintendent as aforesaid, the Superintendent shall forthwith transmit to the Governor an authentic Copy thereof.

XXIX. It shall be lawful for the Governor at any Time within Three Months after any such Bill shall have been received by him to declare by Proclamation his Disallowance of such Bill, and such Disallowance shall make void and annul the same from and after the Day of the Date of such Proclamation or any subsequent Day to be named therein.

XXX. [Governor's Pleasure to be signified on reserved Bills within Three Months.]

XXXII. There shall be within the Colony of New Zealand a

¹ Compare above, No. 17 (5 & 6 Vict., cap. 76, s. 31).

General Assembly, to consist of the Governor, a Legislative Council, and House of Representatives.

XXXIII. For constituting the Legislative Council of New Zealand it shall be lawful for Her Majesty before the Time to be appointed for the First Meeting of the General Assembly, by an Instrument under Her Royal Sign Manual, to authorize the Governor in Her Majesty's Name to summon to the said Legislative Council such Persons, being not less in Number than Ten, as Her Majesty shall think fit; and it shall also be lawful for Her Majesty from Time to Time in like Manner to authorize the Governor to summon to the said Legislative Council such other Person or Persons as Her Majesty shall think fit, either for supplying any Vacancy or Vacancies or otherwise, and every Person who shall be so summoned shall thereby become a Member of the said Legislative Council: Provided always, that no Person shall be summoned to such Legislative Council who shall not be of the full Age of Twenty-one Years, and a natural born Subject of Her Majesty, or a Subject of Her Majesty naturalized by Act of Parliament, or by an Act of the Legislature of New Zealand.

XL. For the purpose of constituting the House of Representatives of New Zealand it shall be lawful for the Governor, within the Time herein-after mentioned, and thereafter from Time to Time as Occasion shall require, by Proclamation in Her Majesty's Name, to summon and call together a House of Representatives in and for New Zealand, such House of Representatives to consist of such Number of Members, not more than Forty-two nor less than Twenty-four, as the Governor shall by Proclamation in that Behalf direct and appoint; and every such House of Representatives shall, unless the General Assembly shall be sooner dissolved, continue for the Period of Five Years from the Day of the Return of the Writs for choosing such House, and no longer.

XLII. The Members of the said House of Representatives to be chosen in every Electoral District appointed for that Purpose shall be chosen by the Votes of the Inhabitants of New Zealand who shall possess within such District the like Qualifications which, when possessed within an Electoral District appointed for the Election of Members of a Provincial Council, would entitle Inhabitants of the Province to vote in the Election of Members of the Provincial Council thereof, and who shall be duly registered as Electors; and every Person legally qualified as such Elector shall be qualified to be elected a Member of the said House.

LIII. It shall be competent to the said General Assembly (except and subject as hereinafter mentioned) to make Laws for the Peace, Order, and good Government of New Zealand, provided that no such Laws be repugnant to the Law of England; and the Laws so to be made by the said General Assembly shall control and supersede any Laws or Ordinances in anywise repugnant thereto which may

have been made or ordained prior thereto by any Provincial Council; and any Law or Ordinance made or ordained by any Provincial Council in pursuance of the Authority hereby conferred upon it, and on any Subject whereon under such Authority as aforesaid it is entitled to legislate, shall, so far as the same is repugnant to or inconsistent with any Act passed by the General Assembly, be null and void.

LIV. It shall not be lawful for the House of Representatives or the Legislative Council to pass, or for the Governor to assent to any Bill appropriating to the Public Service any Sum of Money from or out of Her Majesty's Revenue within New Zealand, unless the Governor on Her Majesty's Behalf shall first have recommended to the House of Representatives to make Provision for the specific Public Service towards which such Money is to be appropriated, and (save as herein otherwise provided) no Part of Her Majesty's Revenue within New Zealand shall be issued except in pursuance of Warrants under the Hand of the Governor directed to the public Treasurer thereof.

[LXIV and LXV enact same provisions as to Civil List Schedule as 13 and 14 Vict., cap. 59. Sum appropriated for Native Purposes only to be altered by reserved Bill.]

LXVI. After and subject to the Payments to be made under the Provisions herein-before contained, all the Revenue arising from Taxes, Duties, Rates, and Imposts levied in virtue of any Act of the General Assembly, and from the Disposal of Waste Lands of the Crown, under any such Act made in pursuance of the Authority herein contained, shall be subject to be appropriated to such specific Purposes as by any Act of the said General Assembly shall be prescribed in that Behalf; and the Surplus of such Revenue which shall not be appropriated as aforesaid shall be divided among the several Provinces for the Time being established in New Zealand under or by virtue of this Act, in the like Proportions as the gross Proceeds of the said Revenue shall have arisen therein respectively, and shall be paid over to the respective Treasuries of such Provinces for the public Uses thereof, and shall be subject to the Appropriation of the respective Provincial Councils of such Provinces.¹

LXVIII. It shall be lawful for the said General Assembly, by any Act or Acts, to alter from Time to Time any Provisions of this Act and any Laws for the Time being in force concerning the Election

¹ The financial provisions of this constitution, like those of most federal constitutions, were a constant source of trouble. In 1856 the General Assembly of New Zealand agreed to hand over the land revenue and three-eighths at least of the customs to the Provinces, and this arrangement, though the Maori War subjected it to an ever-increasing strain, lasted until 1867. After that, the jealousy between the Northern and Southern Provinces, the heavy war expenditure, and the public works policy introduced by the General Government in 1870 brought the financial arrangements of New Zealand more and more into confusion, and this in its turn contributed not a little to the abolition of the Provinces in 1875-6.

of Members of the said House of Representatives, and the Qualification of Electors and Members; provided that every Bill for any of such Purposes shall be reserved for the Signification of Her Majesty's Pleasure thereon, and a Copy of such Bill shall be laid before both Houses of Parliament for the Space of Thirty Days at the least before Her Majesty's Pleasure thereon shall be signified.

LXIX. It shall be lawful for the said General Assembly, by any Act or Acts from Time to Time, to constitute new Provinces in New Zealand, to direct and appoint the Number of Members of which the Provincial Councils thereof shall consist, and to alter the Boundaries of any Provinces for the Time being existing, and to alter the Provisions of this Act and any Laws for the Time being in force respecting the Election of Members of the Provincial Councils, the Powers of such Councils, and the Distribution of the said surplus Revenue between the several Provinces of New Zealand;¹ provided always, that any Bill for any of the said Purposes shall be reserved for the Signification of Her Majesty's Pleasure thereon.

LXXII. Subject to the Provisions herein contained, it shall be lawful for the said General Assembly to make Laws for regulating the Sale, Letting, Disposal, and Occupation of the Waste Lands of the Crown in New Zealand; and all Lands wherein the Title of Natives shall be extinguished as herein-after mentioned, and all such other Lands as are described in an Act of the Session holden in the Tenth and Eleventh Years of Her Majesty, Chapter One hundred and twelve, to promote Colonization in New Zealand, and to authorize a Loan to the New Zealand Company, as Demesne Lands of the Crown, shall be deemed and taken to be Waste Lands of the Crown within the Meaning of this Act: Provided always, that, subject to the said Provisions, and until the said General Assembly shall otherwise enact, it shall be lawful for Her Majesty to regulate such Sale, Letting, Disposal, and Occupation by Instructions to be issued under the Signet and Royal Sign Manual.

LXXIII. It shall not be lawful for any Person other than Her Majesty, Her Heirs or Successors, to purchase or in anywise acquire or accept from the aboriginal Natives Land of or belonging to or used or occupied by them in common as Tribes or Communities, or to accept any Release or Extinguishment of the Rights of such aboriginal Natives in any such Land as aforesaid; and no Conveyance or Transfer, or Agreement for the Conveyance or Transfer, of any such Land, either in perpetuity or for any Term or Period, either absolutely or conditionally, and either in Property or by way of Lease or Occupancy, and no such Release or Extinguishment as aforesaid, shall be of any Validity or Effect unless the same be made

¹ These powers of alteration were enlarged in 1857 by an amending Act, and again in 1862: finally, in 1868, the General Assembly was given power to abolish the provinces.

to, or entered into with, and accepted by Her Majesty, Her Heirs or Successors: Provided always, that it shall be lawful for Her Majesty Her Heirs and Successors, by Instructions under the Signet and Royal Sign Manual, or signified through One of Her Majesty's Principal Secretaries of State, to delegate Her Powers of accepting such Conveyances or Agreements, Releases or Relinquishments, to the Governor of New Zealand, or the Superintendent of any Province within the Limits of such Province, and to prescribe or regulate the Terms on which such Conveyances or Agreements, Releases or Extinguishments, shall be accepted.

LXXIX. It shall be lawful for Her Majesty, by any such Letters Patent as aforesaid, or Instructions under Her Majesty's Signet and Sign Manual, or signified through One of Her Majesty's Principal Secretaries of State, to delegate to the Governor any of the Powers herein-before reserved to Her Majesty respecting the Removal of Superintendents of Provinces, and the Regulation of the Sale, Letting, Disposal, and Occupation of Waste Lands, the Establishment of Municipal Corporations, and the Preservation of aboriginal Laws, Customs, and Usages. . . .

46

LETTER FROM HINCKS TO PAKINGTON

(May 10, 1852) [EXTRACT]¹

(*P.P.* 1852-3, lxxv.)

. . . Most devotedly attached as I am to the maintenance of the subsisting connexion between the mother country and the British American colonies, I cannot view without grave apprehension the prospect of collision between Her Majesty's Government and the Parliament of Canada, on a question regarding which such strong feelings prevail among the great mass of the population. Such a difficulty is the more to be regretted, because the question of the Clergy Reserves is the only one, so far as I am aware, at all likely to

¹ Sir John Somerset Pakington, afterwards Lord Hampton, was Secretary of State for the Colonies from February to December 1852 in Lord Derby's first Ministry. In later Conservative administrations he held the offices of First Lord of the Admiralty and Secretary for War. He was a conscientious and well-intentioned administrator, but a country gentleman more than a statesman: his appointment as a Secretary of State was indeed a surprise, although he succeeded better than was generally anticipated.

In 1850 an Address had been presented by the Canadian Assembly for the repeal of the Imperial Act of 1840 (above, No. 13); and Lord Grey had promised to comply. Before he could carry out his promise, however, his Government was defeated, and the new Secretary of State, Sir John Pakington, in a despatch of April 22, 1852, asked for a further expression of opinion and admitted that Her Majesty's Government was very unlikely to accede to such a request. A copy of this despatch was sent to Hincks, who was in England on railway business, and produced the letter here cited.

lead to collision. It happens, most unfortunately, that public opinion in England differs very widely from that in Canada, on questions at all partaking of a religious character; and as the people of Canada are convinced that they are better judges than any parties in England can be of what measures will best conduce to the peace and welfare of the Province, Her Majesty's Government will, I trust, perceive that the danger which I apprehend is at least deserving of the most grave consideration. I cannot have the slightest doubt that the members of Her Majesty's Government are actuated by the most earnest desire to promote the best interests of Canada, and that, if they could be brought to believe that I have given a faithful account of the state of public opinion there, they would be disposed to yield their own wishes for the sake of the peace of the colony. I am quite ready to acknowledge the high respectability of the petitioners against the repeal of the Clergy Reserves Act. The Bishops, clergy, and an influential portion of the laity of the Church of England, the clergy and a portion of the laity of the Church of Scotland, are doubtless in favour of the present settlement, which, indeed, confers on the Church of Scotland an income wholly beyond its requirements in Canada; while the majority of the Presbyterian population neither receive any share of the endowment, nor desire to participate in it. While, however, I admit the respectability of the petitioners, I think that I am justified in affirming that they do not represent anything like a majority of the population of Canada; indeed, the very fact that they on all occasions endeavour to accomplish their wishes by appealing, not to their own representatives in Parliament, but to the Imperial Parliament, is conclusive proof that they are themselves conscious that their views are not in accordance with public opinion in Canada. I forbear from entering into the consideration of the probable action of the Canadian Legislature on the Clergy Reserves question, because I am anxious to impress on Her Majesty's Government that, although there may be wide differences of opinion among the opponents of the present arrangement as to the best mode of settling the question, a vast majority of the people are agreed as to the necessity of its being effected by Provincial legislation; and I am aware that some of the best friends of the Church of England, question the soundness of the policy which has influenced the promoters of the petitions lately presented to Parliament to look for support to their views in England, instead of using their legitimate influence over public opinion in Canada. I do not by any means desire to conceal from Her Majesty's Government that, saving always the rights of existing incumbents, a very strong feeling prevails, especially in Upper Canada, in favour of the secularization of the Clergy Reserves; but I ought not to omit reminding them that, although it is true that the portion of public lands known as Clergy Reserves was set apart for the religious instruction of the people at

a very early period, and when there were very few inhabitants in the colony, it is likewise true that power was expressly given to the Provincial Legislature 'to vary or repeal' the clauses in the Act 31 Geo. 3, setting apart these lands; that successive Houses of Assembly remonstrated against giving effect to them, and that so firmly were the advisers of his late Majesty King William the Fourth impressed with the necessity of getting rid of this most perplexing question, that Secretary Viscount Goderich, in a despatch dated 21st November 1831, communicated the Royal instructions that a Bill framed in England, should be submitted to the Provincial Legislature, for the purpose of getting rid entirely of the endowment.¹ The people of Canada know well the cause of the failure in carrying out the gracious intentions of his late Majesty, as well as their own repeatedly expressed wishes. The opinions of the mass of the people have never wavered during the last 25 years, although circumstances have from time to time induced them to pause in their efforts, in order to concentrate public opinion on questions more deeply affecting their constitutional rights. I cannot therefore conceive that any action which the Canadian Parliament may take of the nature referred to in the despatch, could be correctly designated as the result of an accidental majority. All the great questions which have been settled in England during the last 50 years, might be said with equal justice to have been carried by accidental majorities; and if a supposition on the part of Her Majesty's Government that any majority in the Canadian Parliament expressing views antagonistic to their own was an accidental one, were deemed a sufficient ground for resisting that majority, I would most respectfully submit that there would be no security whatever for constitutional government. I am well convinced that Her Majesty's advisers have every disposition to attach due weight to the clearly expressed opinion of the people of Canada, and I am therefore anxious to remind them of, and to urge upon their consideration, the past history of the Clergy Reserves question, which I have endeavoured to glance at as briefly as possible. There is a passage in the despatch to the Earl of Elgin which seems to me calculated to lead to some misconception. I refer to the paragraph describing the Clergy Reserves as the only 'public fund, except that devoted to the endowment of the Roman-catholic Church.' I am not aware that any public fund has ever been devoted to the endowment of the Roman-catholic Church in Canada. Whatever property may be in the possession of Roman-catholics, has been obtained principally by private donation or bequest; although in some cases there were additional grants from the French Crown, which were secured to the possessors at the conquest. These grants were made to communities consisting of ecclesiastics or religious ladies, either for charitable or educational purposes, or for the conversion of the

¹ For the despatch of Viscount Goderich, see above, No. 2.

Indians. If I am correct in this statement, as I believe that I am, I most respectfully submit that such grants as those to which I have referred bear no analogy to the Clergy Reserves, and can scarcely be considered as a public fund devoted to the endowment of the Roman-catholic Church. I should not discharge my duty to Her Majesty's Government were I not to state to them with perfect frankness, my views on another paragraph in the despatch. I refer to that in which it is intimated that Her Majesty's Government would be willing to entertain a proposal for reconsidering the mode of distributing the income of the Clergy Reserves. I have no hesitation in stating it as my conviction, that the Canadian Parliament will not invite the legislation of the Imperial Parliament regarding the distribution of a local fund. Any such proposition would be received as one for the violation of the most sacred constitutional rights of the people. . . .

I have, &c.

(signed) FRANCIS HINCKS.

47

DRAFT DESPATCH FROM PAKINGTON TO ELGIN¹

(P.P., 1852-3, lxv.)

Downing-street, December 1852.

MY LORD,

1. I have had the honour to receive your Lordship's despatch, No. 85, of the 22d September, forwarding an Address to the Queen from the Commons of Canada, in Provincial Parliament assembled, on the subject of the Clergy Reserves.

2. I have laid this Address before Her Majesty, who was pleased to receive it very graciously.

3. It is with sincere regret, that Her Majesty's Government feel themselves unable to advise Her Majesty to comply with the wishes of the Assembly, for the introduction of a Bill into the Imperial Parliament, to repeal the Act 3 & 4 Vict. c. 78.

4. In arriving reluctantly at this conclusion, Her Majesty's advisers disclaim any intention of 'violating the constitutional rights' of the Canadian Parliament. On the contrary, they regard those rights with the high respect which is justly due to them, and they fully and distinctly recognize both the justice and the propriety of the general

¹ This draft despatch was not sent owing to the defeat of the Derby-Disraeli Government. The Duke of Newcastle reverted to the policy of Earl Grey, and in 1853 after prolonged debates an Act was passed placing the reserves at the disposal of the Canadian Assembly subject to the rights of existing incumbents (16 & 17 Vict., cap. 21).

rule, that in those dependencies of the British Crown which enjoy the advantages of representative institutions, questions which affect exclusively local interests, should be decided and dealt with by the Local Government and Legislature.

5. But Her Majesty's Government are not less clearly of opinion, that the question of the repeal of the Imperial Act 3 & 4 Vict. c. 78, involves interests, and is connected with circumstances, which make it fairly an exception to this general rule.

6. It is the earnest desire of Her Majesty's Government, not only to avoid any serious 'difference of opinion' with the Legislature and Government of Canada, but to act with them, if possible, in friendly concert, upon a subject of such great and enduring importance to the Canadian people, especially of the Upper Province.

7. Her Majesty's Government desire to call the attention of the Commons of Canada to the circumstances under which the Imperial Act was passed.

8. After a long period of agitation, and frequent attempts at legislation on the part of the Upper Canadian Assembly, an Act was passed by the Parliament of that Province, for placing the disposal of the Clergy Reserves in the hands of the Imperial Parliament. This Act was not confirmed, for reasons stated in Lord John Russell's despatch to Lord Sydenham of the 7th February 1839.¹ Another Act, providing for the sale and disposal of the Clergy Reserves, was subsequently passed by the Provincial Legislature. This Act would have received the Royal assent, but for a legal objection which was found to be insuperable.

9. In consequence of the legal difficulty to the confirmation by the Crown of the Provincial Act, the Act 3 & 4 Vict. c. 78, similar in principle though differing in detail from the Act sent from Canada, was passed by the Imperial Parliament.

10. Her Majesty's Government cannot fail to remember, that not only was the Imperial Act similar in principle to the Provincial Act, but that the former was passed and regarded at the same time, both in Canada and in this country, as a final settlement of a long agitated and most difficult question; and the settlement of which had moreover been pressed upon the Imperial Government by successive Governors of the Canadian Provinces, and by the general wish of the Canadian people.

11. Her Majesty's Government would further remind the House of Assembly that the generally admitted necessity of permanently settling this long debated question, had reference, not only to the manifest evils of prolonged agitation, but also to the circumstances

¹ This despatch signified the disallowance of the Act partly on the ground of unconstitutionality, partly because the policy of the Government was that the clergy reserves should be locally, not imperially, controlled. In any case the Act, a hasty end-of-session measure, was unlikely to settle the question.

under which the reunion of the two Provinces of Canada was then about to take place.

12. It was held, and in the opinion of Her Majesty's Government it was wisely held, to be of paramount importance that a permanent settlement of the Clergy Reserve question should precede the act of reunion.

13. In considering, therefore, how far it is right or expedient to reopen this question, it is impossible for Her Majesty's advisers to overlook the fact, that since it has been decided, the two Provinces, with a population for the most part distinct both in race and religion, have been united under one representative Government.

14. Her Majesty's advisers have pleasure in expressing their high sense of the loyalty and good feeling of the French Canadian population of the Eastern Province. They have the satisfaction of believing that friendly feeling between the French and British population is steadily and constantly increasing; and they would deprecate, in the most earnest manner, any course of action on the part of the Provincial Parliament, which might have the least tendency to interrupt those amicable relations which now so happily subsist between the two races.

15. The French population of the Lower Province enjoy the blessing of an exemplary, a well educated, and a numerous priesthood, with ample endowments for the support of the priests, and for the maintenance of exclusive educational institutions.

16. From the period of the conquest of Canada till the present day, these endowments have been scrupulously respected.

17. Her Majesty's Government have no disposition to question the right or to impugn the motives of such of the representatives of the French population of the Eastern province in the Canadian Parliament, as may deem it their duty to vote, either for the repeal of the Clergy Reserve Act, or for the secularization of the Clergy Reserves. But they feel a deep interest in the peace and welfare of all classes of Her Majesty's subjects in Canada, and with past struggles and contentions fresh in their recollection, they would earnestly press on the consideration of the Canadian Parliament, in no unfriendly spirit, whether there would not be danger of reviving feelings of animosity and discontent, if the British inhabitants of the Upper Province were deprived by the Imperial Parliament of that fund for the support of Protestant worship which they have so long enjoyed, and which is now, whether for general or for missionary purposes, more than ever necessary.

18. I cannot thus communicate the views of Her Majesty's Government with respect to the Address of the House of Assembly which I have now to acknowledge, without repeating, in the most distinct terms, that nothing would be more painful to Her Majesty's advisers, or more at variance with their real feelings, than to be involved in any

difference or controversy with the Parliament of Canada, and that their only wish upon this difficult subject is to co-operate with the provincial authorities in promoting the permanent interests of all classes of Her Majesty's Canadian subjects.

48

DESPATCH FROM THE DUKE OF NEWCASTLE TO

SIR C. FITZROY (August 4, 1853) [EXTRACTS]¹

(*P.P.*, 1854, xliv.)

It is not my present purpose to enter into any discussion on the abstract merits of party or responsible government, and I am not disposed therefore to inquire whether there was good foundation for the assumption which has hitherto prevailed, that the Australian colonies were as yet too scantily peopled, and the colonists too exclusively engaged in the first labour of establishing a community to afford sufficient materials for the construction of this kind of polity. But, whatever the justice of that assumption may be, it is plain that the extraordinary increase of wealth and population which is now taking place is removing day by day, with a rapidity unequalled, the grounds on which it has hitherto rested. There are, no doubt, many who will still be of the opinion that the peculiar character of the population, thus rapidly augmenting,—its as yet slight connexion with the soil, and its addiction to the engrossing pursuit of material progress,—render it unfit to exercise any increased powers of self-government. But even if that opinion is not well founded (as I am myself disposed to hope it is not), all will agree as to the extreme difficulty of withholding political privileges from bodies of men to whom the maxims now prevailing in British domestic policy afford so strong a right to claim them, and of keeping our fellow-subjects in Australia on a different political footing from those to whom these rights have been fully conceded in America.

It appears to me, therefore, that while public expectation is as yet but little excited on the subject of Responsible Government, it is very desirable that we should prepare ourselves to regard its introduction as a change which cannot be long delayed, and for which the way should be smoothed as far as possible by the removal of unnecessary impediments. Nor is it necessary that the preliminary steps

¹ The fifth Duke of Newcastle, who as Earl of Lincoln had been successively Commissioner of Woods and Forests and Chief Secretary for Ireland in Peel's Ministry, was Secretary of State for the Colonies in the Ministry of Lord Aberdeen from December 1852 to June 1854, when the Colonial and War Departments were given to different ministers and he chose the latter. He was at the Colonial Office a second time from 1859 to 1864, when he resigned owing to ill-health and shortly afterwards died. He was a man of liberal opinions and a conscientious administrator, but not of first-rate ability.

should be many or important. The transition has been effected in most of the American colonies with comparatively little disturbance of existing interests, or even of existing political feeling. The main point is, to make it reasonably certain that no injustice will be done to individuals, and no discredit thrown on the public faith, implicitly pledged to them during good conduct, by their arbitrary removal from office. In the few cases in which such removal is essential to the working of the new system, it can only be allowed to take place with the grant of an adequate pension or other fitting compensation.

I am glad to think, from various recent indications, that your task in effecting the necessary negotiations for this purpose, when the case arises, is likely to be comparatively easy. The Legislatures of the Australian colonies have shown themselves very far from deficient in liberality in such transactions as have lately taken place between them and the Home Government,¹ but the facility will probably be much greater if the change should take place before the occurrence of any of those reactions of temporary adversity which cannot but be anticipated as probable after a period of such unparalleled advance.

But with regard to all future appointments to situations of that class which are ordinarily regarded as subject to change with a change of administration in a colony, it is my particular wish that you should make candidates for them fully aware that they can now only be taken subject to the contingency of removal without compensation. This is the course which I have myself adopted in the only instance which has offered itself since I took the seals of this department, and it is most essential with a view to the avoiding of future difficulties.

I must, however, add, that I do not see how this form of government can be substituted for that now prevailing until the Legislature shall have effected the reform already proposed by itself, by constituting a double Chamber. To conduct what is ordinarily understood by responsible administration with a single house, composed in part of nominees of the Crown, would be at all events a new experiment and one of which if I cannot very well foresee the issue, I am not at all inclined to anticipate the complete success. I have thought it advisable to caution you beforehand on this point, in case any accidental circumstance or difference of opinion should have delayed the passing of the measure which has been so long reported to me as under contemplation. . . .

¹ This presumably refers to the willingness shown by the Legislative Councils of New South Wales and Victoria to pay for the military reinforcements sent out at their request after the discoveries of gold and consequent influx of diggers. The Council of New South Wales had readily agreed to increase their pay by a 'gold-fields allowance'; and the Victorian Legislative Council had asked for a force of sappers and miners to strengthen the harbour defences and had volunteered to meet the cost.

I have sent copies of this communication to the several Lieutenant-Governors of Victoria, South Australia, and Van Diemen's Land.

I have, etc.,

(signed) NEWCASTLE.

49

REPORT OF COMMITTEE OF LEGISLATIVE COUNCIL OF NEW SOUTH WALES (July 28, 1853) [EXTRACT]¹

(*P.P.*, 1854, xliv.)

As regards the Constitution of the Legislative Council, your committee consider that—not only by the terms of their declaration and remonstrance of the 5th December, 1851,² but by the letter of agreement to those terms of Sir John Pakington, of the 15th December, 1852, the House is pledged to a Constitution 'similar in its outline to that of Canada.' The subsequent Despatch of his successor, the Duke of Newcastle, appears indeed to admit of some latitude of discretion on this most important subject. But your committee are of opinion, that the offer contained in their declaration and remonstrance necessarily included a nominated Legislative Council in the first instance, and from this offer, independently of the question whether they are strictly bound by it or not, they see no reason to depart. They desire to have a form of Government based on the analogies of the British Constitution. They have no wish to sow the seeds of a future democracy; and until they are satisfied that the nominated, or the future elective council, which they recommend, will not effect the object they have in view, of placing a safe revising, deliberative, and conservative element between the Lower House and Her Majesty's representative in this colony, they do not feel inclined to hazard the experiment of an Upper House based on a general elective franchise. They are the less disposed to make the experiment as such a franchise, if once created, will be difficult to be recalled.

Actuated by these views your Committee have introduced into the Bill 'to confer a Constitution on the colony, and to grant a civil list to Her Majesty,' two clauses, which to a certain extent, are framed in accordance with analogous clauses, to be found in the

¹ The despatch of Sir John Pakington (see below, Section II, No. 20) abandoned the lands to colonial control, but on condition that the colony took steps, as it had offered to do, to introduce a constitution 'similar in its outlines to that of Canada'—i.e. with a nominated Upper House in addition to the Representative Assembly. The Duke of Newcastle, who confirmed Sir J. Pakington's concessions, also thought a second chamber desirable but did not insist that it be nominated. As a matter of fact, Committees of the Legislative Councils in the various colonies had already begun to consider alterations in this direction, under the powers given by the Act of 1850.

² This declaration was an amplified form of No. 42 above.

Imperial Act, 31 Geo. III. c. 31, 'for making more effectual provision for the Government of the Province of Quebec.' That Act authorizes the Crown, whenever it thinks proper, to confer any hereditary title of honour, rank or dignity, to annex thereto an hereditary right of being summoned to the Legislative Council. Your committee are not prepared to recommend the introduction into this colony of a right by descent to a seat in the Upper House; but are of opinion that the creation of hereditary titles, leaving it to the option of the Crown to annex to the title of the first patentee a seat for life in such House, and conferring on the original patentees and their descendants inheritors of their titles a power to elect a certain number of their order to form in conjunction with the original patentees then living, the Upper House of Parliament, would be a great improvement upon any form of Legislative Council hitherto tried or recommended in any British colony. They conceive that an Upper House framed on this principle, whilst it would be free from the objections which have been urged against the House of Lords, on the ground of the hereditary right of legislation which they exercise, would lay the foundation of an aristocracy, which, from their fortune, birth, leisure, and the superior education these advantages would superinduce, would soon supply elements for the formation of an Upper House, modelled, as far as circumstances will admit, upon the analogies of the British Constitution. Such a house would be a close imitation of the elective portion of the House of Lords, which is supplied from the Irish and Scotch peerage; nor is it the least of the advantages which would arise from the creation of a titled order, that it would necessarily form one of the strongest inducements not only to respectable families to remain in this colony, but to the upper classes of the United Kingdom and other countries who are desirous to emigrate, to choose it for their future abode.¹

50

RESOLUTIONS OF LEGISLATIVE COUNCIL OF NEW SOUTH WALES

(*P.P.*, 1854, xliv.)

1. That in the opinion of this House the 'Bill to confer a Constitution on New South Wales, and to grant a Civil List to Her Majesty,' which has just passed this House, is an embodiment of all the rights for which this House and preceding Legislative Councils have for years been contending, and will, when passed into law, redress all

¹ The moving spirit behind this report was Wentworth. He was accused of desiring an hereditary title for himself, and did not deny the fact, though he did not admit it to be a reprehensible ambition. The question of the constitution of the Legislative Council provoked a keen controversy, and Wentworth had to admit that public opinion was overwhelmingly against hereditary titles, and abandoned the proposal.

the grievances enumerated in the petitions to Her Majesty and both Houses of Parliament, adopted by this House on the 5th December 1851.

2. It gives plenary powers of legislation in all matters of local and municipal concernment.

3. It prevents, except in certain enumerated cases relating solely to the prerogative of the Crown and imperial interests, the double power of veto, which has hitherto been the source of much uncertainty and dissatisfaction.

4. It greatly enlarges the basis of popular representation.

5. It establishes among us, for the first time, an independent judiciary.

6. It abolishes the schedules annexed to the Imperial Act now in force, and involves a necessary implication that the Imperial Parliament has no right to tax the inhabitants of this colony, or to appropriate any portion of its revenues.

7. It surrenders to the control of the Legislature the waste lands of the Crown, subject to the maintenance of the vested rights and other interests that have grown up under existing laws, and—

8. To the like control and appropriation the entire consolidated revenues of the colony, from whatever source arising, except that portion thereof which is voluntarily granted to Her Majesty by way of civil list.

9. And, as a necessary consequence, it establishes a responsible government, properly so called, and places in the hands of responsible Ministers the appointment of all offices of trust and emolument within the colony, thus giving to the inhabitants thereof, as nearly as circumstances will admit, the same rights and privileges which belong to their fellow-subjects in the United Kingdom.

10. In framing this Bill, it has been the anxious desire of this House that the Legislative Council and House of Assembly should form as close an approximation as possible to the constitution of both Houses of the Imperial Parliament; and the whole scope of this measure is to give stability to those British institutions which we have; to introduce those which we have not; to cement that union which now happily exists between this colony and the parent country; and to perpetuate, if possible, that identity of laws, habits, and interests, which it is so desirable to have enduring.

11. Such being the intention of this Bill, and the power to frame it having been delegated to this House, under an admission that it was more competent than Parliament itself to devise a suitable constitution for this colony, this House desires to record its earnest hope that his Excellency the Governor-General will lose no time in forwarding to the Minister for the Colonies this Bill for the signification of Her Majesty's pleasure thereon; and that his Excellency will be pleased to accompany it with such explanations as he may deem

necessary, to show the large majorities both of the nominated and elective members by which it has been supported in all its stages, and ultimately passed.

12. That the Draft Act of Parliament brought up by the Select Committee to authorize Her Majesty to assent to the Bill, of which a copy is hereto appended, be transmitted to the Governor-General, with a request that his Excellency will be pleased to forward it to his Grace, the Secretary of State for the Colonies, as being a fit enactment to give the required validity to this Bill.

13. That an address, embodying these resolutions, be presented to his Excellency the Governor-General.

(signed) CHARLES NICHOLSON,

Speaker.

Legislative Council Chambers, Sydney,
21st December 1853.

51

DESPATCH FROM RUSSELL TO DENISON¹

(*P.P.*, 1856, xliii)

Downing Street, July 20, 1855.

SIR,

I transmit to you the Act 'to enable Her Majesty to assent to a Bill 'as amended by the Legislature of New South Wales, to confer a 'Constitution on New South Wales, and to grant a Civil List to 'Her Majesty,' which has now received the Royal Assent.

2. Former communications from this department will have made you acquainted with the causes of the delay which has occurred in passing this measure into law: the bill of the Colonial Legislature of Victoria did not reach this country until May last year, at too late a period in the Parliamentary Session of 1854 to enable Her Majesty's Government to introduce any measure to Parliament with that full consideration and that careful comparison with the bills of a like character passed by the other colonial Legislatures of Australia,² which the great importance of the subject required.

3. In the form which they have chosen for the Legislative measure

¹ On Sir William Denison, see below, p. 301, note 1.

² The constitutions of the different Australian Colonies inaugurated in 1855-6 differed from one another in some important respects. In particular, the Legislative Council was in New South Wales to be nominated, in all the other Colonies to be elected by a limited constituency and by a different method from the Lower Chamber. New South Wales and Victoria—and at first South Australia also—had attempted to establish a distinction between local and imperial subjects, with the result that their constitutions, with these provisions omitted, were based upon Acts of the Imperial Parliament, whilst those of South Australia and Tasmania took the form of local enactments reserved by the Governors and duly sanctioned by the Queen.

now passed into law, Her Majesty's Government have in substance followed the precedent of the Act passed on a somewhat similar occasion to meet the wishes of the Legislature of Canada for altering the Civil List established by the Canada Union Act, namely, the 10 & 11 Vict. c. 73.¹

4. It was their opinion and that of Parliament that although the Legislature of New South Wales had exceeded the powers conferred on it in passing their Bill, and although, therefore, Parliamentary enactment was necessary, it was more expedient to preserve in form, as well as in substance, the measure which had been fully considered and finally enacted by that Legislature, than to supersede its provisions by direct Parliamentary legislation.

5. In rigorous adherence to the same principle, no alteration has been made in any of those provisions which are simply of a local character. It has been the conviction of Parliament that in regard to all points affecting internal government in colonies having local representation, the general principles common to Great Britain and her colonies must be applied with the knowledge of circumstances which can only belong to the colonies. Her Majesty's Government have every reason to hope that the measure before them will form a durable foundation for the social prosperity and good government of New South Wales; but the responsibility for its introduction will rest, as it ought to do, with the members of the Council, by whom it was, in all substantial points, prepared and discussed.

6. But those portions of the provincial enactment which controlled and regulated the future power of the Crown as to the reservation and disallowance of colonial Acts, and as to the instructions to be given to Governors respecting them, have been omitted by Parliament. These portions were plainly not of a local character, but regarded the connexion of the colony with the body of the Empire. I will not now enter into the very important subject of discussion which the omitted clauses afford. It is sufficient for me on the present occasion to observe, that Her Majesty's advisers were of opinion that a change of such vital consequence ought not to be effected by partial legislation in the way proposed; and if even this were otherwise, the particular clauses in question were open to difficulties of an insuperable kind.

7. With respect to the instructions given to governors, I am not sure that some amount of misapprehension does not prevail. It has been the uniform practice, not in Australia only, but throughout the Colonial Empire of Great Britain, for Her Majesty's Government to issue general directions to governors as to the classes of Acts which should be reserved by them for the assent of the Crown, sometimes

¹ The number of this Act is wrongly given: it was 10 & 11 Vict. cap. 71. It empowered Her Majesty to assent to a reserved Bill of the Colonial Legislature altering the civil list, despite the fact that the Legislature had exceeded its powers, and declared that in the event of such assent being given the sections of the Union Act affected by it should be repealed.

by the formal instruments accompanying their commissions, sometimes merely by despatch. But these instructions, however binding on the governor's discretion, are not in the nature of legal conditions, the non-observance of which in any way affects the validity of colonial Acts. The clauses in question would therefore have removed no substantial legal impediment, while they would have fettered the supreme executive authority in a manner wholly inconsistent with the preservation of the general interests and unity of the empire.

8. The only other portions omitted are clauses 53 and 54 of the Colonial Act,¹ according to the original numeration, which went beyond the functions of the legislature, relating as they did to other colonies besides New South Wales, and might have become inconvenient from possible conflict with other local enactments, if they had been ratified by Parliament.

9. It is now necessary that I should direct your attention to a few particular clauses of the Act of Parliament authorizing Her Majesty's assent to the colonial enactment which follows in the schedule.

10. The necessity for some provision such as that embodied in Section 4 is evident, when the framework of the Colonial Bill is considered.

11. By Sections 17 and 42 of that Bill (referring to the original numeration) power was given to the new Legislature to alter the constitution of the council, subject to certain provisions as to the majority.² But the framers of the Constitution appear to have omitted altogether any special provision, reserving to the future Legislature power to alter any other provisions of the Bill whatever.

12. Of course if this Bill had been passed in the exercise of the legitimate functions of the Council, and required only the assent of the Crown to give it force, this power would have been implied. The new Legislature might alter anything done by the former. But inasmuch as the sanction of Parliament was required, the several provisions of the Bill would have become, in a legal point of view, sections of an Act of Parliament, and it might be very doubtful, at least, whether in the absence of special provision the new Legislature could have in any way meddled with them.

13. The effect of the provision as now introduced will, it is conceived, be as follows. In the first place the new Legislature will have full power to alter all the provisions of the Bill not specified in clauses 17 and 42 aforesaid; in the next place it will have power to alter the portions specified in those clauses, subject to the conditions imposed by those clauses; and finally it will have power to repeal those conditions themselves, if it shall think proper, by enactment passed by

¹ These sections purported to define the boundaries of the colony and to provide, in case of any readjustment of boundaries, that the assent of the colony losing territory should be given.

² A two-thirds majority of both Houses was required.

simple majorities. By this provision Her Majesty's Government conceive that the purpose of the Council will be most effectually answered, because if the Bill had been passed under their ordinary powers it is clear that, although they might have imposed these conditions, any subsequent Legislature might have repealed the clauses imposing them by simple majorities. But in any case of a Bill being offered for your assent repealing these conditions you will reserve such Bill for Her Majesty's pleasure.

14. In this way also Her Majesty's Government conceive they are but fulfilling the very important purpose of allowing full and free re-consideration of the Constitution of the Legislative Council or Upper House. They have no wish whatever to prejudice that question.

15. Section 5 has been introduced in pursuance of the opinion given by the Law Advisers of New South Wales, and communicated by Sir C. Fitzroy's despatch of 20th December 1853, No. 160, and of the wishes of the Executive Council therein expressed.¹ It is hoped that the power given to the two Legislatures to alter this provision by concurrent laws may obviate any inconvenience which might otherwise be found in its application.

16. Sections 6 and 7 are necessary, in order to enable Her Majesty to carry at any future time into effect the power given by former statutes, and continued by the local Bill, in different words, of separating from New South Wales such portions of its northern territories as may appear to require the establishment of an independent government.

17. With respect to the schedule containing the Civil List, as it is popularly termed, although in effect only an enactment withholding certain portions of the regular expenditure of the colony from being voted in the annual estimates, Her Majesty's Government have the fullest reason to recognize the ample nature of the provision therein made, and to admit that the Legislature have acted on a very liberal understanding of the mutual engagements which formed the basis of the present enactment.

18. It is, however, by no means their wish to enforce on the colony the observance of the present arrangement as final. They believe it to be of great importance to the political well-being of a community that certain services of the higher class should be provided for by law, and not subject to annual vote; but they regard this as a subject of strictly local, however high, concern, and they would not be justified in throwing other obstacles in the way of its reconsideration than what the local legislature have themselves thought proper to raise.

19. But with respect to the holders of present interests, whether in the salaries or pensions provided for therein, Her Majesty's Govern-

¹ This section further defined the boundary between New South Wales and Victoria.

ment entertain the opinion, in which they do not doubt the concurrence of yourself and the Legislature, that the maintenance of those interests is incumbent on the Crown in order to keep faith with individuals, and incumbent on the Legislature in due execution of its compact with the Crown. I have, therefore, to instruct you to reserve for the assent of the Crown any Bill which may affect such interests, those, namely, of present incumbents, either in such salaries or pensions, unless in your discretion you think proper to negative it.

20. With respect to all other Bills I have no instructions to convey other than those implied in the general rule, that Her Majesty's Government fully recognize in practice the expediency of leaving local questions to be dealt with by the local Legislature, although they are not prepared to admit the practicability of the scheme devised by the Legislature of New South Wales for classifying such questions.

21. The only remaining instructions which I have to convey relate to the introduction of responsible government; but it is so evident from the provisions of the Colonial Bill before me, that your advisers and the Legislature have had fully in view the exigencies of that system, that I am not aware that any special directions are required from myself. You will shortly receive a fresh Commission and Instructions amended in those particulars which the introduction of that system renders it necessary to change. There need be no delay in your bringing the Act into operation, as these documents will arrive in time for the assembling of the new Legislature.

22. I need scarcely say that the question of introducing into the measures lately before Parliament, clauses to establish a federal union of the Australian colonies for purposes of common interest, has been very seriously weighed by Her Majesty's Government; but they have been led to the conclusion that the present is not a proper opportunity for such enactment, although they will give the fullest consideration to any propositions which may emanate in concurrence from the respective Legislatures.

23. I will now conclude with the expression of my sincere hope, and that of Her Majesty's Government, that the new institutions thus conferred on New South Wales, greatly extending as they do the powers of self government now possessed by its community, may prove of permanent and solid advantage. It has been a source of deep satisfaction to Her Majesty's Government, and to all classes in the mother country, to mark the practical evidence which has been afforded by their Australian fellow subjects, and foremost among them by the people of New South Wales, of their deep sympathy with her fortunes throughout the arduous struggle in which she is now engaged. And at the same time the colonists of New South Wales, by their avowed desire to assimilate their institutions as far

as possible to those of the parent country, have proved that this sympathy was not merely the expression of a common sentiment arising from common origin, but connected with a deliberate attachment to the ancient laws of the community from which their own has sprung. Whilst continuing, therefore, to pursue their present independent career of progress and prosperity, I have the fullest confidence that they will combine with it the sedulous maintenance of ties thus cemented alike by feeling and principle.

I have, etc.

(signed) J. RUSSELL.

52

DESPATCH FROM SECRETARY SIR GEORGE GREY TO WYNYARD [EXTRACT]¹

(*P.P.*, 1854-5, xxxviii.)

SIR, Downing-street, 8 December 1854.

I have to acknowledge your despatches of the numbers and dates specified in the margin, reporting the proceedings which have taken place in the General Assembly of New Zealand on the subject of the future Executive Government of the colony.

As regards the most important portion of that subject, I have taken the earliest opportunity of informing you that Her Majesty's Government have no objection whatever to offer to the establishment of the system known as responsible government, in New Zealand.² They have no reason to doubt that it will prove the best adapted for developing the interests as well as satisfying the wishes of the community. Nor have they any desire to propose terms, or to lay down restrictions on your assent to the measures which may be necessary for that object, except that of which the necessity appears to be fully recognised by the General Assembly, namely, the making provision for certain officers who have accepted their offices on the equitable understanding of their permanence, and who may now be liable to

¹ Sir George Grey, Bart., was Secretary of State for the Colonies from June 1854, until the fall of the Aberdeen Ministry. He was a capable speaker and administrator, and a man of high principles, genial manners, and liberal opinions. He had been Under-Secretary during Glenelg's tenure of the Colonial Office, but had since been connected rather with the Home Office.

Colonel R. H. Wynyard, as officer commanding the troops in New Zealand, administered the government from the departure of Sir George Grey in December 1853 until the arrival of Governor Gore Browne in 1855.

² This despatch was the reply to a resolution of the first General Assembly of New Zealand for the establishment of the principle of ministerial responsibility, moved by E. G. Wakefield and carried with only one dissentient on June 5, 1854. The Attorney-General was of opinion that the Governor had no power to introduce the system, and attempts at a compromise, in the shape of a mixed Council of officials and Assemblymen, were unsuccessful. There was a thinly attended Assembly in 1855, but the first responsible Ministry did not take office until 1856.

removal. The only officers mentioned in your despatches as likely to fall within this category, are the Colonial Secretary and Treasurer, and the Attorney-general, nor am I myself aware of any others; but I do not wish to fetter your discretion, if further consideration makes it, in your opinion, desirable to alter the list.

Should the arrangements made for this purpose be in your judgment satisfactory, you are authorised to admit at once the new holders of office under the responsible system, reporting their names for confirmation in the usual manner. There will be no occasion, on this supposition, for a further reference to the home Government before the change is carried into effect. But if the arrangements proposed should not meet your approval, which I trust will not be the case, the appeal to the home Government for ultimate decision will be unavoidable.

The preliminary steps for the introduction of responsible government being thus few and plain, I do not understand the opinion which some portions of this correspondence appear to convey, and which is supported by the language of your Address of 31st August, that Legislative enactment by the General Assembly is required to bring the change into operation. In this country the recognised plan of Parliamentary government, by which Ministers are responsible to Parliament, and their continuance in office practically depends on the votes of the two Houses, rests on no written law, but on usage only. In carrying a similar system into effect in the North American Colonies legislation has indeed been necessary, to make a binding arrangement for the surrender by the Crown of the territorial revenue, which has generally formed part of the scheme, and for the establishment of a civil list, but not for any other purpose. In New Zealand the territorial revenue has already been ceded to the Assembly,¹ and Her Majesty's Government have no terms to propose with reference to the civil list already established. Unless, therefore, there are local laws in existence which would be repugnant to the new system, legislation seems uncalled for, except for the very simple purpose of securing their pensions to retiring officers; and if uncalled for, such legislation is objectionable, because the laws so enacted would probably stand in the way of the various partial changes which it might be necessary to adopt in the details of a system in its nature liable to much modification.

¹ By section 66 of the Constitution Act. See above, No. 45.

MEMORIAL OF GENERAL ASSOCIATION FOR THE AUSTRALIAN COLONIES [EXTRACTS]

(*P.P.*, 1857, Session 2, xxviii.)

To the Right Honourable Henry Labouchere, Her Majesty's Principal Secretary of State for the Colonies.¹

The MEMORIAL of the General Association for the Australian Colonies, adopted at a Meeting held in the City of London, on the 31st day of March 1857, William Charles Wentworth, Esquire, late Member of the Legislature of New South Wales for the City of Sydney, in the Chair.²

Respectfully Sheweth,

That at the time the constitution now in force for the government of New South Wales was presented by its framers to the Legislature of that colony, it was foreseen that a federal assembly would soon be an indispensable bond of union for all the colonies forming the Australian group. . . .

That the same conviction was strongly impressed upon Earl Grey, as Secretary of State for the Colonies, at a much earlier period, as clauses for the establishment of a federal assembly were introduced by him into the previous Bill for the government of the Australian colonies, though these clauses were subsequently abandoned by his Lordship from difficulties which occurred, or were suggested, in the progress of that measure through the House of Commons.

That the want of a federal authority has been already felt in regard to the establishment of lighthouses in Bass's Straits, to the collection of Custom duties on the River Murray, which intersects the three colonies of South Australia, Victoria, and New South Wales, and to the construction of an electric telegraph between Adelaide and Melbourne.

That, although the lighthouses so indispensable for the safety of the numerous vessels that are constantly navigating Bass's Straits have, it is believed, at last been undertaken, under arrangements made after considerable delay, expense, and difficulty, among the colonies bound, in justice, to contribute to their erection and support; and although the electric telegraph between Adelaide and Melbourne is about to proceed under a similar arrangement, it is evident that all

¹ On Labouchere, see above, p. 122, note 1.

² The General Association for the Australian Colonies was composed of colonists and others interested in the welfare of Australia, and was formed by Wentworth, now living in England, in 1855. After the passage of the Australian Constitution Bills its chief object was to urge the question of federation upon the attention of the Colonial Office. The reply of Labouchere convinced the Association of the fruitlessness of further action.

such arrangements must be uncertain and unsatisfactory, so long as the federal sanction necessary for their legalisation is wanting.

That, although by a similar arrangement between the Governments of South Australia, Victoria, and New South Wales, the Custom duties payable on commodities conveyed to those colonies by the River Murray are collected in South Australia, and divided among the Governments of those three colonies, the result of this clumsy contrivance is, that the duties only which are payable by law in the colony of South Australia can be levied there, and that hence the colonists of Victoria and New South Wales, consumers of those commodities, pay a greater or less amount of duty than are leviable by law in the colonies to which they respectively belong, and in some instances pay duties on commodities not subject in their own colonies to any duty at all.

That, under these circumstances, it is not to be wondered at that a strong feeling of discontent should be growing up among the inhabitants of these colonies; from their being compelled to resort to such indirect, tedious, and illegal expedients in substitution of that federal authority, without which their several constitutions must continue incomplete, as regards all measures and undertakings which require the joint action and co-operation of any two or more of them.

That the amount of inconvenience arising from this want of a federal authority may be collected from the speech of the Hon. Mr. E. Deas Thomson,¹ delivered by him on the 29th of October last, in the Legislative Council of New South Wales, in his capacity of Vice-President of the Executive Council, and as representing in that house the opinions of the Parker ministry; in which speech there is an enumeration of seven matters requiring immediate federal action.

That in the subjoined extract from the 'Melbourne Argus' of the 4th of November last, an influential and widely-circulated paper in Victoria, the necessity for establishing at once a federal assembly is strongly insisted upon.

That it is understood that this necessity has been strongly represented by the Government of South Australia; and it may be presumed, although responsible government is only just beginning to take effect in the Australian colonies, that such representations have been general, from the Governors of the colonies composing the Australian group, to Her Majesty's Secretary of State for the Colonies.

That your memorialists humbly conceive, that it is the duty of the Imperial Government to anticipate the wants of its colonies, to see

¹ Edward Deas Thomson was appointed by Huskisson clerk of the council of New South Wales in 1827. In 1837 Sir R. Bourke, whose son-in-law he was, appointed him Colonial Secretary, and he filled this office with distinction until the establishment of responsible government. For some years after that he was one of the leading members of the Legislative Council. His early advocacy of federation is one of his chief claims to fame.

that their institutions keep pace with their wants, and not to defer an indispensable enactment like this, until grave inconveniences arise, and produce, as they assuredly must, universal dissatisfaction and complaint.

That a federal assembly can only originate in an Act of Parliament directly constituting such a body, or giving the Legislatures of the different colonies, now or hereafter composing the Australian group, or any two or more of them, a permissive power to form or join such a federation, when, and as they may think fit.

That the latter course is that which your memorialists would press upon your attention as the most desirable, if not the only practical course which can now be adopted; but that, in their opinion, a complete equality of representation, as between all the Australian colonies, should be insisted upon, without reference to the extent of their population, in any federal assembly that may be formed.

That this principle of equality is quite as indispensable to the fair representation of these colonies in a federal assembly, as it is to the fair representation of the several States of America in the Senate of that country; and that the adoption of any other principle would tend to the undue debasement and detriment of the weaker colonies, and to the unfair exaltation and advancement of the stronger.

That in the opinion of your memorialists, a permissive Act of Parliament, which would enable any two or more of these colonies to depute an equal number of persons to be selected by or from each Legislature to form a convention, with power to create a federal assembly, and to define, as far as possible, the various subjects to which this federal action should extend, is all the Parliamentary interference that is required . . .

That in the event of any jealousy arising in the colonies, in respect to the place for holding the federal assembly, or the power of any Governor to assent to or dissent from its acts, these jealousies, we submit, might be got rid of in the first instance by making the assembly perambulatory (as suggested in the article from the 'Argus'), and giving the veto to its acts only to the Queen; but as the Bill subjoined does not contemplate or allow any federal revenue, properly so called, to be at the immediate disposal of the federal assembly, and as it will be little more, under these circumstances, than a court of registry for its own acts, it is not conceived that the colonies generally will feel much interest in its locality. The subjects it has to legislate upon are few, and its sessions will be short. Each colony represented in this assembly ought to bear a quota of the expense necessarily attendant upon it, as well as a just apportionment of the expenses attendant on those acts or measures in which such colony may be interested.

That in the event of any supposed encroachments of authority by the federal assembly being resisted by any of the colonies submitted

to its jurisdiction, the Privy Council might be resorted to in order to settle any such difference, until the creation of a court of appeal for these colonies generally, or, in the last instance, after the creation of such a court.

That your memorialists do not consider it necessary to go into further details, as they do not desire that Parliament should legislate directly on this subject, and the necessary details connected with the proper creation of a federal assembly will rest with the convention to whom this power may be delegated by the colonial Legislatures, which doubtless will select the most competent men they possess for the discharge of this very important function. The perfection, too, of such details, in the first instance, will be of less importance, if that permissive Act of Parliament, which your memorialists request you to bring in, and pass with all convenient speed, shall contain a power enabling the federal assembly itself, after it shall be created, to supply any necessary details which may be omitted in its original constitution.

Signed, by Order of the Meeting,

W. C. WENTWORTH, Chairman.

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LETTER FROM MERIVALE TO WENTWORTH¹

(*P.P.*, 1857, Session 2, xxviii.)

SIR,

Downing-street, 16 May 1857.

I am directed by Mr. Secretary Labouchere to acknowledge a memorial presented by you, as Chairman of the General Association for the Australian Colonies. . . .

2. Mr. Labouchere has considered the statements and arguments of this memorial with that attention which the great importance of the subject, and the character of the signatures attached to it, demanded.

3. He is fully sensible of the inconvenience which has already been felt in some instances in Australia, from the want of any means of joint action by the several colonies; and he is aware that inconvenience of this kind is likely to be experienced still more strongly in future, unless some remedy be found for it.

4. Nevertheless, after weighing, to the best of his ability, the

¹ Herman Merivale, after a brilliant career at Oxford, became in 1837 Professor of Political Economy. In the last three of his five years of office he delivered a course of lectures upon the colonies which made a great impression. In 1847 he was appointed to succeed Sir James Stephen as Permanent Under-Secretary of State for the Colonies, and he held the post until 1859, when he was transferred to a similar position at the India Office, which he held until his death in 1874. 'He was', says Leslie Stephen, 'a man of great promptitude of judgement, and vigorous, if not combative, in defending it'; but despite his great abilities he hardly left so profound an impress upon the colonies as Stephen and Frederic Rogers.

reasons for and against the scheme submitted to him, he has arrived at the decided opinion, that Her Majesty's Government would not in reality promote the object of the memorialists by introducing such a measure as that of which the outlines are given in the memorial, notwithstanding its purely permissive character.

5. Without entering into all the objections to which it appears to him exposed, it may be sufficient to say that he cannot think it at all probable that the several colonies would consent to entrust such large powers to an assembly thus constituted, or to be bound by laws imposing taxation (such as is involved, for instance, in tariff arrangements), or in the appropriation of money, which is involved in several of the subjects of legislation suggested by the memorialists; and, even if they were to consent in the first instance to the establishment of such a system, the further result would, in his opinion, very probably be dissension and discontent. He does not, therefore, think that Her Majesty's Government ought to introduce a measure of this character, although merely permissive in its provisions, unless they are convinced that there is a reasonable prospect of its working in a satisfactory manner. Mr. Labouchere would not consider himself warranted in making such a proposal, unless he was both himself satisfied that it was founded on just and constitutional principles, and also that there was reason to believe that it was likely to be acceptable to the colonies which were concerned in it.

6. Mr. Labouchere proposes to send copies of this correspondence to the Governors of the several Australian colonies for their information, and he will readily give his best attention to any suggestion which he may receive from those colonies in reply, with a view to providing a remedy for defects which experience may have shown to exist in their institutions, and which the aid of Parliament is required to remove. In the meantime he cannot but hope that even if any attempt to provide for their joint action in a regular and binding manner, by the establishment of some general controlling authority, should be found impracticable or premature, yet that much may be done by negotiation between the accredited agents of the several local governments, the results agreed upon between such agents being embodied in legislative measures, passed uniformly and in concert by the several Legislatures.

I am, &c.

(signed) HERMAN MERIVALE.

MEMORIAL OF CANADIAN DELEGATES TO
SIR E. B. LYTTON ¹

(*Skelton, Life and Times of Sir A. T. Galt.*)

SIR,

London, 23rd October, 1858.

We have the honor to submit for the consideration of Her Majesty's Government that the Governor-General of Canada, acting under the advice of his responsible advisers, has been pleased to recommend that the subject of a Federative Union of the Provinces of British North America should form the subject of discussion by Delegates from each Province, to be appointed under the orders of Her Majesty's Government, and we have been instructed to urge the importance of this step as well upon grounds peculiar to Canada as from considerations affecting the interests of the other Colonies and of the whole Empire.

It is our duty to state that very grave difficulties now present themselves in conducting the Government of Canada in such a manner as to show due regard to the wishes of its numerous population. The Union of Lower with Upper Canada was based upon perfect equality being preserved between these provinces, a condition the more necessary from the differences in their respective language, law and religion, and although there is now a large English population in Lower Canada, still these differences exist to an extent which prevents any perfect and complete assimilation of the views of the two sections.

At the time of the Union Act Lower Canada possessed a much larger population than Upper Canada, but this produced no difficulty in the Government of the United Provinces under that Act. Since that period, however, the progress of population has been more rapid in the western section, and claims are now made on behalf of its inhabitants for giving them representation in the Legislature in proportion to their numbers, which claims, involving, it is believed, a most serious interference with the principles upon which the Union was based, have been and are strenuously resisted by Lower Canada. The result is shown by an agitation fraught with great danger to the

¹ This memorial, of which Galt was the author, was a product of the complicated political situation in Canada. After the two-day Brown-Dorion Administration of July, Cartier and Macdonald desired to strengthen their position by the inclusion of Galt, whose breadth of view and financial ability had won for him a considerable reputation. As the price of the surrender of his independence, Galt demanded that federation should be made a ministerial question. A deputation was accordingly formed to visit England and interview the Colonial Office upon this and other questions. The Imperial Government was not very sympathetic, and there is reason to believe that even Macdonald and Cartier had been actuated largely by a desire to postpone the settlement of the seat of government question.

On Sir E. B. Lytton, see below, p. 181, note 1.

peaceful and harmonious working of our constitutional system, and consequently detrimental to the progress of the province.

The necessity of providing a remedy for a state of things that is yearly becoming worse, and of allaying feelings that are daily being aggravated by the contention of political parties, has impressed the advisers of Her Majesty's representatives in Canada with the importance for seeking for such a mode of dealing with these difficulties as may forever remove them. In this view it has appeared to them advisable to consider how far the Union of Lower with Upper Canada could be rendered essentially federative—in combination with the provinces of New Brunswick, Nova Scotia, Newfoundland and Prince Edward Island, together with such other territories as it may be hereafter desirable to incorporate with such confederation from the possessions of the Crown in British North America.

The undersigned are convinced that Her Majesty's Government will be fully alive to the grave nature of the circumstances referred to which are stated by them under the full responsibility of their position as advisers of the Crown in Canada. They are satisfied that the time has arrived for a constitutional discussion of all means whereby the evils of internal dissension may be avoided in such an important dependency of the Empire, as Canada. But independent of reasons affecting Canada alone it is respectfully represented that the interests of the several Colonies and of the Empire will be greatly promoted by a more intimate and united Government of the entire British North American Possessions. The population, trade and resources of all these Colonies have so rapidly increased of late years and the removal of Trade restrictions has made them, in so great a degree, self-sustaining, that it appears to the Government of Canada exceedingly important to bind still more closely the ties of their common allegiance to the British Crown, and to obtain for general purposes such an identity in legislation as may serve to consolidate their growing power, thus raising, under the protection of the Empire, an important confederation on the North American Continent.

At present each Colony is totally distinct in its Government, in its customs and trade, and in its general legislation. To each other, no greater facilities are extended than to any Foreign State and the only common tie is that which binds all to the British Crown. This state of things is considered to be neither promotive of the physical prosperity of all, nor of that moral union which ought to be preserved in the presence of the powerful confederation of the United States.

With a population of three and a half millions, with a foreign commerce exceeding Twenty-five million Sterling, and a Commercial Marine inferior in extent only to those of Great Britain and the United States, it is in the power of the Imperial Government, by sanctioning a confederation of these Provinces, to constitute a Dependency of the Empire, valuable in time of peace, and powerful in the

event of war—forever removing the fear that these Colonies may ultimately serve to swell the power of another Nation.

In the case of the Australian Colonies the Imperial Government have consented to their discussion of the question of Confederation—although the reasons for it, as relates to the Empire, can scarcely be either so urgent or so important as those which affect British North America.

The Government of Canada do not desire to represent the feelings of the other provinces. Their application is confined to the request that the Imperial Government will be pleased to authorise a meeting of Delegates on behalf of each Colony and of Upper and Lower Canada respectively, for the purpose of considering the subject of a Federative Union, and reporting on the principles on which the same could properly be based.

That such delegates should be appointed by the Executive Government of each Colony, and meet with as little delay as possible.

That the Report of such Delegates should be addressed to the Secretary of State for the Colonies, and that a Copy of it as soon as it is prepared, should be placed in the hands of the Governor and Lieutenant-Governor of each Colony, in order that he may lay the same before the Provincial Parliament, with as little delay as possible.

Upon the Report of such Delegates it will be for Her Majesty's Government to decide whether the interests of the Empire will be promoted by Confederation and to direct the action of the Imperial Parliament thereon—with the concurrence of the Legislatures of the respective Colonies.

We have the honour to be,

Your most obedient and humble servants,

G. E. CARTIER.

JNO. ROSS.

A. T. GALT.¹

¹ A. T. Galt was from this time on recognized as the best financier in Canadian politics. He had previously been connected first with the British American Land Company and then with the Grand Trunk Railway. As Finance Minister of Canada he took a prominent part in the federation negotiations of 1864-7, but he resigned very soon the office he held in the first Dominion Ministry. Later he was the first High Commissioner for Canada in London.

Georges Etienne Cartier was the leader of the French Canadian section of the Ministry as Attorney-General for Canada East and was also its nominal head. From the time when he first became prominent in Canadian politics after Lafontaine's retirement he was always essentially a Conservative, despite the fact that as a young man he had taken part in the rebellion of 1837-8; and he soon became, and remained until his death in 1873, the close political ally of J. A. Macdonald. Cartier was a man of great energy, self-confidence, and force of character.

John Ross was at the time President of the Council and was also President of the Grand Trunk.

DESPATCH FROM SIR GEORGE GREY TO
SIR E. B. LYTTON¹

(*P.P.*, 1860, xlv.)

SIR, Cape Town, 19 November 1858.

I have the honour to acknowledge the receipt of your private Despatch of the 6th of September last, calling upon me for an expression of my views upon the policy of incorporating British Kaffraria with the Cape Colony, and, if possible, of uniting all Her Majesty's dominions in South Africa under some common, and, of course, free Government.

2. When the policy was adopted of dividing South Africa into many states, bound together by no ties of union, it was thought that the mother country derived no real benefit from the possession of this part of the African continent, except in holding the seaport of Simon's Bay.² It was also thought that peace was ruin to the Cape Colony; that the expenditure of British money during wars made the fortunes of its inhabitants; that they therefore encouraged such wars, often in the most profligate and unscrupulous manner. The European inhabitants beyond the Orange River were believed to be really rebels. It was thought that, even in Cape Town, it might at any moment be necessary to employ a military force to punish the inhabitants, and to prevent the commission of disgraceful scenes. So strongly was this apprehension of disloyalty felt, that even when the countries beyond the Orange River were thrown off, and the question of their federation amongst themselves arose, it was thought that it would be desirable to encourage such a measure, not with a view to the interests of the inhabitants, but because if they were united into one country, they would have but one Government and one capital; that therefore when it was necessary to punish or re-conquer them, it would be only requisite to deliver one blow at one point, instead of several blows at two or more points.

3. It was further thought that the occupation by Great Britain of the

¹ The despatch, though called forth by the request of the Secretary of State for Sir G. Grey's opinion on federation with particular reference to the status of British Kaffraria, was the culmination of the Governor's endeavours to reverse the policy which had led to the abandonment of the Orange River Sovereignty. He knew that the Imperial Government still wished to adhere to this policy, but he also knew that at any rate a large section of Orange Free State opinion was favourably disposed towards the plan, and presumably believed that the time had come to press it.

Edward Bulwer, first Lord Lytton, was Secretary of State for the Colonies from May 1858 to June 1859, when Lord Derby's Ministry was defeated. He never attained much political distinction, and this was the only office he ever held, though his reputation as a novelist gave his name some weight in the popular mind.

² Simon's Bay, an inlet on the western side of False Bay, to the south of the Cape Peninsula, is the most favourable situation for a naval base in South Africa, and is the head-quarters of the African Station.

country beyond the Orange River had been a bubble and a farce, in which the Cape colonists were all interested; for that it was to them a great gaming table, and out of the reach of the police. That the country was itself, in great part, a desert, and would hardly keep half-starved antelopes. That it could never produce wool, as the boers were so prejudiced, that they would keep nothing but hairy fat-tailed sheep. That the labours of the missionaries amongst the native tribes of Africa had produced no results, as no instances were known of real conversions to Christianity, and that it was a lamentable fact that all the Christianity among the native tribes in Southern Africa was purchased and paid for; its principal and sole object and end being the facility which such means afforded of obtaining gunpowder.

4. These opinions prevailing regarding the country and its inhabitants, the necessary consequence was, that Her Majesty's Government determined to rid themselves of such costly and troublesome possessions, and the measures necessary for doing this were hurriedly carried out before any free form of government had been introduced into, or tried in any part of South Africa. Necessarily, therefore, the wishes of its inhabitants were in no way consulted in regard to what was done.

5. The first step taken was to get rid of the people living beyond the Vaal River. A convention was concluded with some people who lived there.¹ The majority of the inhabitants of that country were not consulted on the subject, nor were the Legislatures of the Colony of the Cape of Good Hope, the Orange River Sovereignty, or Natal, or the chiefs of the neighbouring native nations so consulted. All these persons, therefore, justly or unjustly, as may be, believed, and still believe, their interests to have been injured by this convention. It gave no satisfaction to the mass of the people inhabiting the Transvaal country, who are now trying to split into several republics; and it left all the boundaries of the Transvaal country but one undefined, so that the Government of Portugal, the Government of Natal, and several native states have, at various times, lodged complaints with this Government in reference to the course Great Britain pursued in making this convention, which has in no respect promoted peace or union, but has, apparently, sown the seeds of many future disagreements.

6. The next step taken, with the view of getting rid of territory, was the abandonment of the Orange River Sovereignty,² a measure likewise carried out in opposition to the wishes of nearly all the

¹ The reference is to the Sand River Convention of January 17, 1852. See below, Section VI, A, No. 22. The statements as to colonial feeling made in this paragraph are very questionable. The fissiparous tendencies in the Transvaal were largely due to the death of Pretorius, who had made the advances which led to the Convention, in 1853.

² On the abandonment of the Orange River Sovereignty, see below, Section VI, A, Nos. 21, 24, 25, 26.

wealthy and influential inhabitants of that country, as also in opposition to the wishes of nearly all the European and native inhabitants of South Africa, who live without the Orange River territory. In this case, also, the boundaries were left unsettled, and many outstanding questions with the neighbouring tribes left unadjusted, from which constant difficulties have since sprung.

7. The treaties existing with Moshesh,¹ Waterboer,² and other native chiefs were then declared to be at an end, Natal and Kaffraria became separate and independent dependencies of the Crown, and the dismemberment of South Africa, as far as it was then intended to carry it, became complete.

8. Great Britain, when this had been done, stood in this position in reference to South Africa:—She had three several possessions here; the Colony of the Cape of Good Hope, the Colony of Natal, and the dependency of British Kaffraria.³ No mutual relations whatever existed between these. They were independent countries, which had no common council which could arrange measures for the general safety and defence, although they were surrounded by barbarous enemies, to repel or resist whom union was so necessary. Two of them had free representative legislatures, between which no mutual intercommunication existed. Then there were two or more independent European republics lying beyond our borders, the governments and legislatures of which were in no way bound up with ours, and which, like all bodies who have newly gained their freedom, were likely to take opportunities of exercising it, as if for the sole purpose of assuring themselves and others that they really possessed it. It would evidently have been a matter of the greatest difficulty to induce all the above-named European states, which had no common congress or council belonging to them, to have agreed upon any general plan of policy, or of mutual defence.

9. On the other hand, all the European states had residing within their limits numbers of dangerous barbarians, and were surrounded by nations of wily and able enemies, who had, for a series of years, been engaged in wars with them; and the usual difficulty had been created which follows the abandonment of territory in the face of a barbarous people. Prestige was lost, and the barbarians hoped, if

¹ Moshesh, the founder and paramount chief of the Basuto tribe, was the ablest leader of men the Bantu have produced during the European occupation of South Africa. In the forties and early fifties he was perhaps at the height of his power, and the Boers of the Orange River found him a very troublesome neighbour. The Orange Free State had just fought its first inconclusive Basuto war, which had been ended by the mediation of Sir G. Grey as High Commissioner. Moshesh, though he never became a Christian, was greatly influenced by the French missionaries who lived with his tribe.

² Waterboer was one of the chiefs of the half-breed Griqua tribe, and 'captain' of the district of Griquatown. Sir B. D'Urban's treaty with his father in 1834 was the first formal treaty to be made with a South African chief.

³ Kaffraria was the name given to the district between the Keiskamma and Kei Rivers annexed after the war of 1846–7. See below, Section VI, A, No. 13.

they pressed us hard, that still larger tracts of country would be abandoned.

10. At the same time, Great Britain was believed (rightly or wrongly, as may be) to be placed, by the conventions she has made, in this anomalous position: that she could conclude no treaty, form no alliance with any native tribes, whilst the independent republics could conclude such treaties and alliances with them as they thought proper; and that she was bound to prevent the native nations from obtaining supplies of arms and ammunition for the protection of life or property, whilst she was bound to permit the inhabitants of the independent republics always to obtain such supplies of arms and ammunition as they might require, without reference to the objects for which they might be used. Hence arose a belief amongst the native tribes, that Great Britain had determined to bring about, indirectly, their ultimate extermination, and that nothing but a general combination amongst themselves could prevent this result from being arrived at.

11. The public revenues of all the great tract of country occupied by the states and tribes alluded to consisted principally of duties of customs, which might be levied at the ports of Simon's Bay, Cape Town, Port Elizabeth, East London, and D'Urban. These duties were paid indifferently by all the European and native inhabitants of the several states into which the southern portion of Africa is divided. But Great Britain made an arrangement by which all the duties of customs levied at the ports of Simon's Bay, Cape Town, Port Elizabeth, and East London, were placed under the control of the Legislature of the Cape of Good Hope, for the sole benefit of that single Colony; whilst all the dues levied at the port of D'Urban were placed under the control of the Legislature of Natal, for the benefit of that Colony. Thus was established a cause of jealousy, dissatisfaction, and future contention between the two Colonies, the Cape of Good Hope and Natal, and the whole of the rest of Southern Africa. In the case of the Orange River Sovereignty, one of the reasons for abandoning it was that its revenues were not equal to its expenses; yet, when Her Majesty's subjects were cast off, virtually nearly all revenue was taken from them by any claim they might have on the revenues of customs being ignored.

12. The Colony of Natal is very fertile, but it is extremely limited in extent. The Colony of the Cape of Good Hope is probably, as a whole, the least fertile part of Southern Africa, and its boundaries are now strictly defined, so that it admits of no extension. The countries which lie beyond the Orange River are very fertile and productive; some of them are so to the highest degree. Their extent may be said to be boundless, and in many portions they are capable of carrying a very dense population. The population of the Colony of the Cape of Good Hope is continually spreading into these coun-

tries. In a few years, therefore, they must, in products, resources, and number of inhabitants, far surpass the united Colonies of the Cape of Good Hope and Natal.

13. Although these European countries lying beyond our Colonies are treated as separate nations, their inhabitants bear the same family names as the inhabitants of this Colony, and maintain with them ties of the closest intimacy and relationship. They speak, generally, the same language, not English, but Dutch. They are, for the most part, of the same religion, belonging to the Dutch Reformed Church. They have the same laws, the Roman Dutch. They have the same sympathies, the same prejudices, the same habits, and frequently the same feelings regarding the native races, although marked and rapid changes in public opinion, in relation to this subject, are taking place, as also in reference to the increasing use of the English language and the adoption of English customs.

14. I think there can be no doubt that, in any great public, or popular, or national question or movement the mere fact of calling these people different nations would not make them so, nor would the fact of a mere fordable stream running between them sever their sympathies or prevent them from acting in unison. I think that many questions might arise in which, if the government on the south side of the Orange River took a different view from that on the north side of the river, it might be very doubtful which of the two governments the great mass of these people would obey.

15. The only bond of union which at present holds together these states, European and native, is the High Commissioner. He must generally be a stranger, unacquainted with the people, their language, or forms of thought, and with no general council to advise him,* nor with any means whatever of becoming acquainted with the general current of public opinion or feeling throughout this mass of states and people. A slight failure of temper or judgment on his part might, at any time, bring on a native war, a general rising of the natives, or a European rebellion.

16. The defects of the system thus described appear to be that the country must be always at war in some direction, as some one of the several states, in pursuit of its supposed interests, will be involved in difficulties, either with some European or native state. Every such war forces all the other states into a position of an armed neutrality or of interference. For, if the state is successful in the war it is waging, a native race will be broken up, and none can tell what territories its dispersed hordes may fall upon. Nor can the other states be assured that the coloured tribes generally will not sympathise in the war, and that a general rising may not take place. Ever since South Africa has

* *Note*—He has an Executive Council, as Governor of the Cape Colony; but these gentlemen know little or nothing of the state of public opinion in other colonies or states.

been broken up in the manner above detailed, large portions of it have always been in a state of constant anxiety and apprehension from these causes. The smallness and weakness of the states, and a knowledge that they are isolated bodies, bound by no ties of interest or common government with other states, has encouraged the natives to resist and dare them, whilst the nature of the existing treaties, and the utter abandonment of the natives by Great Britain, to whom they had hitherto looked up, has led the natives to combine for their mutual protection, and thus to acquire a sense of strength and boldness such as they have not hitherto shown, so that whilst the Europeans have appeared to grow weak, they have felt themselves increase in strength and importance.

17. Again, such petty states must be constant foci of intrigues and internal commotions, revolutions, or intestine wars. The affairs which occupy their legislatures are so small that they can raise no class of statesmen to take enlarged and liberal views. They can only inadequately provide for the education or religious instruction of their people. They can possess no able bar, no learned Judges; can have no efficient administration of justice. Trade and commerce must, therefore, necessarily languish. Their revenues will be so small, that they cannot efficiently provide for their protection. Hence a new inducement is given to the surrounding native races to attack them. Life and property thus become insecure, and a general lawlessness follows, the effect of which is most detrimental upon the Government of this Colony, and upon the interests of Great Britain.

18. In recommending a remedy for this state of things, I would urge that experience has shown that the views which led to the dismemberment of South Africa were mistaken ones. That in point of fact, Her Majesty's possessions here are of great, and yearly increasing value to the trade and commerce of Great Britain, and may be made valuable to an almost indefinite extent. That it has now been conclusively shown that the people do not desire Kafir wars; that they are fully aware of the much greater advantages they derive from the peaceful pursuits of industry, and from cultivating their valuable exports. That they are willing to contribute largely to the defence of the portion of Her Majesty's possessions which they inhabit, and would do so much more largely if they were allowed to take a more direct share in the administration of the affairs of this country, and that Her Majesty has no more faithful and loyal subjects than the inhabitants of this country are. That missionaries have already produced, and are producing most beneficial effects and influences amongst the tribes of the interior.

19. What, therefore, I would recommend would be that an Act of Parliament should be passed, or that some measures should be taken, which would permit of the several states and legislatures of this country forming amongst themselves a federal union,

such as their several interests would show them to be for the common good.

20. This union of federated states would possess a general Government administered by a Governor, representing and appointed by Her Majesty, assisted by a Legislature chosen by the people of the several states, which would have powers of legislation upon all points of general interest, and relating to the proportions in which the general revenues should be divided between the several states. To the general Legislature would also belong the duty of providing for the general safety.

21. The Governor should, I think, be assisted by what is called a responsible ministry, possessing the confidence of the general Legislature, without whose advice it would not be competent for him to act. Such council would, probably, be made up of the representatives of the several states, so that a knowledge of the requirements and feelings of every part of this vast country would be brought to bear on each question which came under discussion; an advantage which only those who have to carry on the government under the present system could fully estimate.

22. The several states should, I think, through their own local governments and legislature, have full and free scope of action left to them in all subjects which relate to their individual prosperity or happiness. The heads of their local governments should correspond with the general Federal Government upon all necessary points, so that they might act in conjunction with that Government in relation to all subjects which concerned the general safety or weal.

23. Under such a form of Government a large number of persons in each state would be trained to take general views upon the highest questions relating to the common welfare. No war could be entered upon but with the general consent of all the states. If any dispute arose between one of the states and a native chief, the demands made upon such chief would be probably just ones, for they would be considered by a large and impartial body. They would, from this cause alone, command respect, but I think they would not be likely to be disputed, for it would be known that a demand made in the name of such a large federation would certainly be ultimately enforced.

24. Under such a system, I think it very improbable that any large native war would again take place; but if it did, it would be entered upon with enthusiasm by the people upon whom it had been forced. It would have been determined upon by their own representatives after every fitting effort had been made to avoid it, and they would provide large means for carrying it on. They could not then say, as they might now say, it had been brought on by the mismanagement of a High Commissioner or the Home Government, and that they had nothing to do with the matter. I do not think that such a system as I propose would immediately relieve Great Britain from all military

charges in reference to this country, but I think it would, at once, tend to diminish these charges, and ultimately greatly to reduce them.

25. The Governor, acting also in accordance with the advice of a responsible ministry, would avoid all the hazards now incurred by the High Commissioner, of seriously involving Her Majesty with the inhabitants of this country if he then adopted any measures repugnant to their feelings. His proceedings would simply lead to a change in the administration, not to the very serious disputes and differences with the home authorities which might now take place.

26. I do not think it necessary to advert to the additional security which would be obtained for life and property under the system I have proposed; to the confidence which would then be created in the decisions of the constituted courts; to the encouragement which would be given to talent by the openings offered in the administration, in the senate, on the judicial bench, at the bar; to the encouragement and security which would be given to trade and commerce by uniformity of insolvency laws, and of laws regulating bills of exchange, as also from the prevalence of general peace and security; to the prosperity and contentment which would follow from a fair application throughout the whole of South Africa to great public works and improvement of the general revenues, to which all alike contribute; to the great increase to the revenues which would follow from the stimulus given to trade and industry by peace and prosperity, so that the very states which abandoned a share of the whole revenues which they now enjoy might reasonably hope to gain more than they lost: these and like points will suggest themselves to any one who considers the entire plan now proposed. It may be sufficient generally to say, that while South Africa, now broken up into various European and native states, many of which are without revenues, without firm governments, without hope for the future, and are involved in intestine and foreign disputes, appears to be drifting, by not very slow degrees, into disorder and barbarism, hopelessly giving itself up to an uncertain and gloomy future, to provide against the exigencies of which it is powerless, under such a system as I propose, the inhabitants of all parts of the continent generally, who are nearly allied to one another by relationship or common interests, would be enabled to unite for their common interests and defence, and to provide year by year for the varied exigencies of the country which may arise either from their contact with the native tribes or from some of the manifold chances to which all nations, especially those inhabiting vast and populous continents, are liable. I feel sure that such a system will save Great Britain from vast future expense and anxiety; if it is adopted, it will only then be necessary for her to determine in each case of difficulty which may arise (and I do not think many such would arise) what aid it is in her power to afford.

27. The general Government of this Colony, when made acquainted

with this, would then calculate its own resources, and determine what it was capable of undertaking.

28. Ever since I have been in this country I have found an increasing willingness on the part of the inhabitants to provide for their own safety and defence. I attribute this to their having only recently enjoyed a free legislature; and I am entirely satisfied that if, with a generous confidence, they are permitted, upon a still larger scale, to take such measures as they think necessary for their own safety, and for that of their friends and relations, whom they will never regard as a foreign nation, they will make still more ample and willing efforts to relieve Great Britain from all unnecessary charges in relation to South Africa.

29. Such a proceeding as I advocate would also present the advantage of sweeping away those existing treaties which now embarrass us so much. Hereafter, also, no treaties would be necessary. The general Legislature would make all laws which were necessary, relating to the subjects which the treaties now embrace. Such laws would be subject to the confirmation or disallowance of Her Majesty. The authority of Great Britain, in relation to these subjects, would therefore be as great as it is now; but a law, not a treaty, would fix these subjects. The law would have been made by the people of the country, and must be in conformity with their wishes; not perhaps adverse to these, as the existing treaties are. If the law proved inconvenient in practice, as the treaties are, the law could at once be got rid of by the same power that made it. Treaties, on the other hand, remain in force, and we are bound by them.

30. In answer to the several questions raised in your letter, I beg to state that I do not think that Natal could conveniently be united in a federal union with this Colony, unless the Orange Free State was included in the same union, otherwise it would be entirely separated from the Colony of the Cape of Good Hope by large intervening tracts of country occupied by another nation.

31. Nor do I think that Kaffraria could be advantageously united with the Cape Colony, without the consent of the Colonial Parliament having been previously obtained.

32. But I think that if the several legislatures of the Cape of Good Hope, Natal, and the Orange Free State, were empowered to form a federal union, embracing Kaffraria within their limits, and adopting into the union, either now or hereafter, all such states as might see fit to join them, including even native states, they would accept such a measure. That probably the present Cape Colony would be broken into two or three of such states, and that representatives sent from the respective legislatures would, conjointly with the Governor, settle all matters of detail, without giving further trouble to the home Government in relation to them.

33. Much, of course, depends on the circumstances of the country,

when it is first known here that Her Majesty's Government would consent to such a line of policy being pursued. Recently there has been, from the difficulties which have prevailed in the country, a very general desire to see such a measure adopted as I have now proposed; but this has been, to a great extent, chilled and repressed by the frequently expressed determination of Her Majesty's Government for the future to avoid any changes in the line of policy which they had adopted in regard to South Africa. People, therefore, feared that no change would be assented to, until some great difficulties had arisen.

34. But I think the answer that should be made to any objections raised to re-opening these questions should be, that the arrangements now in force in South Africa were not only necessarily made without the sentiments of its inhabitants having been consulted, but even against their well-known wishes; and that now that they have representative bodies, and have become used to self-government, it is at once a generous and prudent line of policy to re-adjust these, in conformity with their well-ascertained desires, fortified as these would be by local knowledge and experience. By adopting this course all sympathies and interests would be evoked in favour of the line of policy it was determined to pursue, and a willing people would strive to make successful that which they had themselves recommended. Now the difficult question constantly arises, how are the inhabitants of this country to be induced to give their personal services, and to vote large sums of money for the promotion of objects which they deem unsuited to their circumstances, and adverse to their interests; and I fear that this difficulty will, year by year, increase, and that England will find it more and more difficult to retire from the costly system on which it has entered.

35. It is also hardly possible to help wishing, that if ever England should be compelled to retire from this country, and to throw its inhabitants entirely on their own resources, it should leave them in such a state that they could provide, at least tolerably, for their own safety, and ultimately attain to prosperity and greatness; so that blessings might follow the mother country as she withdrew, and it might hereafter be admitted that her rule had been beneficial and far-seeing. But if she is ever forced to retire from this country whilst South Africa is divided as it now is, a long period of anarchy, confusion, and trouble must prevail, and, it is to be feared, that sentiments of indignation will rather be felt against Great Britain, which forced such difficulties upon the people here, than those feelings of gratitude which it would be so desirable to see entertained.

36. All the foregoing considerations, as they successively arise, appear conclusively to show how desirable it is to allow to the people of South Africa an opportunity of exercising some influence on their own future destiny.

37. I have not thought it necessary to trouble you with any details of the form of government I should propose for the states of the contemplated federal union. The constitution of New Zealand embodies the model which I should propose for adoption, and that form of government could easily be so altered as to suit in every particular the circumstances of South Africa.

I have, &c.

(signed) G. GREY.

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MINUTE OF CARNARVON ON SIR GEORGE GREY'S DESPATCH¹

(C.O. 48/390.)

SIR EDWARD LYTTON,

Without undertaking to argue the whole question of S. African Federation I think it easy to show that Sir G. Grey does not advance any very substantial reason for the adoption of a policy which he warmly advocates.

Sir G. Grey's despatch is an answer to yours of the 6th Sept., but instead of replying to the questions asked there he enters at length upon a matter to which you never even alluded. Your enquiry was as to the possibility and propriety of uniting British Kaffraria with the Cape—of the practicability of further extending this union to Natal—of the prospects of success which such a combination would have and of the practical steps which it would become necessary to adopt if such a change were ever decided upon. Your question relates exclusively to British Colonies; Sir G. Grey's answer is confined almost as exclusively to the reunion of the Independent Dutch States with the Cape, Kaffraria and Natal. These are the terms on which he is prepared to accept federation and he says or implies distinctly that unless the Independent States form part of the S. African System which he urges he will have none of it. This from Sir G. Grey's own point of view may be a wide grasp of a complicated subject and a ready mode of solving all the intricate questions which would arise in effecting an union of our Colonies as suggested in your despatch, but I do not think that it is a practical measure which under present circumstances at all events any English Minister could propose to Parliament. It is not less than a proposal that we should retrace our steps, resume a sovereignty from which we have

¹ The fourth Earl of Carnarvon was now holding his first official post as Under-Secretary for the Colonies. It is curious that he should be most widely known through his unsuccessful efforts to promote the federation of South Africa between 1874 and 1877. Colonial policy was always his chief political interest, though a short tenure of the Irish Lord Lieutenancy in 1885-6 was marked by his famous interview with Parnell.

recently with trouble and expense disembarassed ourselves and stultify our past policy here and at the Cape. Amounting then, as Sir G. Grey's plan does, to a proposition to do that which Parl^t. would not and could not agree to, the question may be said to be disposed of, but it may perhaps be worth while to state some few of the objections involved in what he does propose although that proposal is fundamentally impracticable.

1. Does Sir G. Grey's scheme look to an increase or a diminution of the powers of the Home Gov^t. in the affairs of the Federation? It is evident as Mr. Merivale¹ has pointed out that it amounts to an abandonment and not a consolidation of our powers, which may be very well if it is considered expedient to strike off our S. African Settlements from the list of Colonies but which otherwise is in itself destructive of the whole plan. For though Sir G. Grey argues that such a federation would give unity to the several parts of it and that the feeling of contentment and gratitude to the Mother Country when the day of separation arrives would more than compensate us for any sacrifices we may make, yet I do not know in the whole history of the world of an instance where the separation of a Colony from the Mother Country has not had as it's proximate cause some grievance or difference, and where the dissolution of the tie has been accomplished with the mutual satisfaction which is generally predicted for us by all those who speak of our connexion with our Colonies as a merely temporary arrangement. Of course this may be otherwise in S. Africa but untill we have had some experience of the circumstances on which Sir G. Grey builds so much of his theory we may justly hesitate to sacrifice what we have and what is certain for what we probably never shall obtain even if it exists at all.

2. Assuming, however, that Sir G. Grey's plan does not mean the abandonment of all power by the Mother Country and the independance of the Federated States, are there any reasonable grounds for believing that the federation would, as far as it is itself internally concerned, work satisfactorily, or does Sir G. Grey suggest even an outline of the machinery by which it would be worked? What rational probability is there that the several members of the Federation will not quarrel as soon as they are brought into relationship? Are we sure that the interests of the several states are identical or even very analogous? If this is not so disputes are inevitable and we have no alternative but either to stand by and see their quarrels, which may go very far, or interpose ourselves.

If we leave the settlement to them we ought to know what provisions can be made for a federal Gov^t. with a stronger executive than

¹ Merivale's minute had criticized Sir G. Grey's historical retrospect, and had also pointed out that, whereas the existing situation had its disadvantages, the proposed federation would deprive Great Britain of all power in South Africa while leaving her with the responsibility for its defence.

most federal Gov^{ts}. possess—if on the other hand the Crown—i.e. the Colonial Minister—undertakes the task, it is obvious that the difficulties of composing the differences of Colony with Colony are evidently much greater than in the case of conflicting parties in the same Colony. Suppose that the O. R. T. and the T. V. R.¹ dissent as they have dissented before—from the policy determined on by the Cape, or the Cape and B. Kaffraria and Natal, are we to acquiesce in the dissent if it leads perhaps to prohibitive duties or tolls or as is possible bloodshed on the frontiers? if so, there is an end of Federation. But if not, and if our view of what is right coincides with that which may be taken in the O. R. T. and the T. V. R. are we to back up the claims of the Dutch States and to coerce the Cape Colony into what we believe is for the common good? But further not only ought the members of a federation to have interests and policy generally the same, but there ought to be a certain equality between them. But in the present case there is a marked inequality. How practically are colonies or states so unequal in size, population, development, natural resources to be federated? Will the Cape consent to possess only the same representation as Natal or the Trans Vaal R., or to be divided and subdivided in order to equalise its districts with the general low level of the other States? or if this is admitted to be improbable what is to be the principle by which in the Federation States as well as mere numbers are to be represented? Again as to the financial considerations connected with the federation—what is contemplated here? Natal has no superfluous revenue, B. Kaffraria may be said to [be] wholly unequal to pay its way, the Dutch States I imagine are penniless. But are these collective deficiencies to be made good by the Cape Colony? and if so by what inducement will this last be tempted to so losing a bargain?

3. But granting that the federation can be established and that when established it can be worked with tolerable harmony—neither of which points Sir G. Grey even alludes to—what result of policy will follow from the change?

Several very serious results occur at once. Whatever powers this Country might be disposed to make over to the federal Gov^t. there are several great lines of policy to which every administration at home has adhered, which are unalterably laid down by public opinion here, and which it would be almost impossible either to abandon or to leave to chance. Such is the Native question—our relations with them, our treatment of them. In the Dutch States we often hear that the kidnapping of native children is reduced to a practice and there are laws in the Natal statute book directly guarding against their forcible apprenticeship. It is unlikely that the Boers will as soon as they become a part of the federation abandon their

¹ The O. R. T. and the T. V. R. are, of course, the Orange River Territory and the Transvaal Republic.

present practices in this respect; and it is equally improbable that those in Natal who have long sought to do the same will acquiesce in the relaxation of the rule as regards a member of the common federation. Nor could the Home Govt.—if there is to be any connexion beyond the most nominal one—tolerate the existence of this practice whether in one state or another. Again in Natal there has been for some time a constant effort on the part of the Legislature to appropriate the miserable £5000 set aside for native purposes beyond their control. In the event of federation will it be possible any longer to maintain these reserves or [do] the Legislature and the Colonists appear as yet prepared to be entrusted with such funds?

Or to take another great result on S. African policy which Sir G. Grey anticipates from federation—He says that in his Colonial Utopia not only will a federal Govt. view with great calmness questions of war or peace but that there will be no disposition in matters of policy towards that which makes or leads to war. But putting aside the consideration that the power to entertain questions of peace and war have never been given to any Colony—not even Canada where representative Govt. has been carried to it's fullest development—on what grounds does Sir G. Grey believe this, if indeed he is in earnest? He would not say that in any of the separate Colonies or States there is to be found the calmness and impartiality which he anticipates in them when combined, and how is it reasonable to argue that the intentions and actions of the same men when in combination will be precisely the reverse of what they now are when separate? Or is it historically true that in proportion as you numerically strengthen a great democratic federation you diminish their aggressive tendencies on their neighbours?

I am disposed to think on the contrary that the present separation and consequent sense of individual weakness is the best safeguard for fairness towards the native tribes and for peace on the frontier.¹

Jan. 7. 1859.

C.

¹ Before any answer had been sent to Sir G. Grey's despatch, news had reached England of his invitation to the Cape Assembly to take the question of federation into consideration, and he was accordingly recalled for disregarding the instructions of the Imperial Government on a matter of high policy. The Duke of Newcastle reinstated him shortly afterwards, but on the express condition that he should refrain from agitating the federation question.

II

COLONIZATION

COLONIZATION policy in the thirties and forties is rightly associated with the name of Edward Gibbon Wakefield. Before him there had been parliamentary grants for emigration, and Wilmot Horton and others had advocated it as a remedy for distress. Wakefield did more. He studied systematically the labour problem in the colonies, and by his doctrine of the 'sufficient price' for land he brought the theory of colonization into line with the political economy of the day, and explained how it could be effected at small expense to the Mother Country. Lord Howick, then Under-Secretary for the Colonies, was strongly attracted by Wakefield's ideas, and he was responsible for their first application to practice—the introduction of a uniform price of 5s. per acre into the land system of New South Wales [1]. Attempts were also made to stimulate emigration, and in particular to apply part of the colonial land revenue to the introduction of women. This, however, was only an instalment of Wakefield's principles, and he was by no means satisfied. He wished to found a new colony in South Australia expressly for the purpose of applying his ideas *in toto*. He secured the establishment of a Company, but its project left the Colonial Office so little control that Stephen had no difficulty in showing that the Secretary of State ought not to give it his consent [2]. Wakefield persevered, and in 1834 the new colony was established by Act of Parliament [3]; but his ideas and those of the Colonial Office differed so widely that the attempt to make a compromise between them was foredoomed to failure. It soon became clear, too, that one of the main objects of the Wakefield theory as originally framed and applied in New South Wales—the concentration of the settlers in the interests of civilization—was impracticable in Australian conditions. Sir Richard Bourke strongly urged that the settlement of pastoralists at Port Phillip should be given the countenance and thereby brought under the control of Government [4]. He convinced the Colonial Office, and the hopeless attempt to confine the Australian squatter within fixed limits was finally abandoned [5].

So far the influence of Wakefield had been almost entirely confined to Australia, and even there the trial of his theories had been partial only. The North American Colonies had altogether declined to adopt them. In 1836–8 he made a great effort to have them more widely applied. Before the Commons Committee on Colonial Lands in 1836 he advocated central control of the lands of the whole Empire in the interests of a comprehensive policy of Empire settlement [6]; and Durham in his Report, under the influence of Wakefield, recommended that lands should be one of the subjects reserved to the Imperial Power. There was never any real chance of the adoption of this policy as a whole, but it is significant that in 1837 an Agent-General for Emigration was appointed in England [7], and in 1840 a Board of three Colonial Land and Emigration Commissioners set up with somewhat more extensive functions. In Canada, however, the ideas of Wakefield were not considered any more practicable after the Durham Report than they had been before [8], and no attempt was made

by the Colonial Office to impose them upon the North American Colonies [9, 10]. A valiant attempt of Buller in 1843 to induce Canada, in particular, to adopt a more systematic colonization was altogether unsuccessful. On the other hand, New Zealand was colonized under the auspices of Wakefield in 1839-40; and despite the bankruptcy of South Australia in 1841—a failure for which Wakefield cannot be blamed—the Land Sales Act of 1842 established a uniform land policy throughout the Australasian Colonies, and its principles were those of Wakefield modified to some extent in the light of experience [11].

This, far as it fell short of Wakefield's hopes, was the zenith of his influence. The Act was never really in accord with Australian opinion outside South Australia. Land sales had already virtually stopped, and the Wakefield principles as interpreted by the Colonial Office meant that assisted immigration should stop also [12]. The Legislative Council of New South Wales vehemently maintained that it was the Land Sales Act that made land unsaleable, though Sir George Gipps warmly defended the Act and ascribed the depression which undoubtedly existed to quite other causes [13]. The chief land grievance in New South Wales at the time was, however, the insecure tenure of pastoral lands. Gipps agreed that changes in the law were desirable, and the Home Government, after considering his recommendations, made certain proposals, but the squatters thought them insufficiently liberal [14]. Further representations by them produced the Order in Council of March 1847, which, though much criticized afterwards, was undoubtedly an honest attempt to give the squatters fair terms and at the same time to safeguard the interests of future agricultural settlers [15].

By this time emigration to Australia was reviving, and emigration to the North American Colonies, under the stimulus of the Irish famine, was reaching unprecedented figures. Many comprehensive schemes of Irish colonization were put forward, but they were all regarded as unworkable by the Canadian authorities, and Lord Grey was of opinion that in the absence of an actual scheme of colonization mere Government assistance would be worse than useless [16]. The famine emigration of 1847 was marked by an appalling amount of disease and death, but it was not difficult to show that the responsibility did not rest, as was sometimes alleged, with the Imperial Government and its agents the Colonial Land and Emigration Commissioners [17]. Despite two successful experiments, virtually independent of Government, made on a small scale in New Zealand—the settlements of Otago and Canterbury—the influence of the doctrines of systematic colonization was now on the decline. New South Wales was as much opposed as ever to high-priced land, and the conduct of immigration and the squatting Order in Council were more and more criticized [18]. These criticisms were usually accompanied by a demand for colonial control, and Wakefield himself, more embittered than ever against the Colonial Office, was inclined to support this demand. The last upholder of his old ideas, and not the least able, was Lord Grey [19]. But the colonists of the future, whose interests Lord Grey claimed to be considering, could not make their voices heard, and the time had come, as Sir John Pakington realized, to allow the colonists to control their own colonization [20]. Relics of the old system still survived: the Land Sales Act was not repealed till

1855, and emigration continued to be conducted by the Colonial Land and Emigration Commissioners; but gradually the colonies took these questions into their own hands [21], and local control of land and immigration policy became a recognized attribute of self-government.¹

I

DESPATCH FROM GODERICH TO DARLING

(January 9, 1831) [EXTRACT]²

(*P.P.*, 1831, xix.)

Considering Emigration as a means of relieving the Mother Country, it is quite clear that no such relief can possibly be afforded by the mere removal of capitalists, that it is the Emigration of the unemployed British Labourers which would be of real essential service, while I think it also appears that this would be the most useful class of Emigrants even as regards the Colony, from the extreme difficulty which is now complained of in obtaining labourers, and the competition for the service of convicts, together with the glut which so frequently takes place of agricultural produce at the price at which, under the present system, it can be afforded. The latter circumstance seems likewise to prove that a mere extension of cultivation is much less desirable than is generally supposed. Wheat, it appears, is sometimes at so high a price as 14s. 9d. a bushel in Sydney, a price which even in this country would be deemed extravagant. Indeed I believe the average price of wheat in Sydney market would be found equal to that which it bears in Great Britain, and yet the want of demand for their produce is, to the Colonists, a subject of loud and frequent complaint. These two apparently inconsistent evils, of a high price and a want of demand, lead me to believe that cultivation has been too widely extended, and that it would have been more for the interests of the Colony if the settlers, instead of spreading themselves over so great an extent of territory, had rather applied themselves to the more effectual improvement and cultivation of a narrower surface. With concert and mutual assistance, the result of the same labour would probably have been a greater amount of produce, and the cost of transporting it to market would have been a less heavy item in the total cost of production. A different course however has been pursued, chiefly, as it appears, owing to the extreme facility of acquiring land, by which every man has been encouraged to become a proprietor, producing what he can by his own unassisted efforts. If these views be correct, what is now required is to check this

¹ Asiatic immigration long remained an exception to this statement.

² Sir Ralph Darling, Governor of New South Wales from 1825 to 1831, was a soldier by profession and a stern, even harsh, disciplinarian. With the 'exclusionist' party he kept on good terms; but the majority of the colonists, headed by W. C. Wentworth, were constantly at issue with him.

extreme facility and to encourage the formation of a class of labourers for hire, as the only means of creating a market for the agricultural produce of the Colony, of effecting various improvements, and of prosecuting the many branches of industry which are now neglected, while, at the same time, by enabling the agriculturalists to apply the great principle of the division of labour, his produce will be increased and afforded at a more reasonable rate.

To carry these views into full effect would perhaps require greater alterations than can at present conveniently be adopted. Something has, however, been already done by the alteration of the law which renders indentures entered into by labourers more binding than they have heretofore been, thereby holding out some additional inducement to those possessed of the means, to assist in defraying the expense of their Emigration.

Another and important advance towards a better system may, I think, be made by a measure, simple and easy in itself, and which will at the same time have much more effect in preventing the occupation of land by persons unable or unwilling to improve it, than the present complicated and, in practice, nugatory regulations. The measure to which I allude, is that of declaring that in future no land whatever shall be disposed of otherwise than by sale, a minimum price (say five shillings an acre) being fixed, but this price not to be accepted until upon proper notice it shall appear that no one is prepared to offer more, the highest bidder being in all cases entitled to the preference; ten per cent. on the whole of the purchase money to be paid down at the time of sale, and the remainder at an early period after the sale and previous to possession being granted. This last regulation I conceive to be of great importance, and it ought uniformly to be adhered to. When land was formerly disposed of by sale, the plan seems to have failed in consequence of the long credit which was given.

Such is the general object of the Regulations which I hope shortly to be enabled to send out to you in more detail, and authorized by His Majesty's signature. In the meantime I should wish you to suspend all further grants of land, excepting to persons to whom you may already have made positive promises, and to those who may have received from this office the printed Regulations hitherto in force and have proceeded to the Colony on the faith of obtaining land accordingly. To immediate sales of land upon the principle I have laid down I do not object, if they can conveniently be effected before you receive more particular instructions.

I am, &c.

(signed)

GODERICH.¹

¹ This despatch was undoubtedly due to the conversion of Lord Howick to the ideas of Wakefield. See above, p. 8, note 2.

MEMORANDUM OF STEPHEN [EXTRACTS]¹

(C.O. 13/1: P.R.O.)

On reading the Draft of the Charter of Incorporation of the South Australian Land Company many remarks have occurred to me which I shall pass over in the following pages, because they refer merely to technical questions for the decision of which the time has scarcely yet arrived. I shall confine myself entirely to those topics in which some general principle would seem to be involved.

It is proposed to transfer at once to the Company, and ultimately to an Assembly to be convened by them, the Sovereignty over a Territory exceeding in extent the Kingdoms of Spain and Portugal. This scheme is an avowed imitation of that which prevailed on the first settlement of the British North American Colonies. But whether the origin or the result of those projects be considered they are I apprehend wholly unfit to be adopted as models in the present day. The North American grants were all defeated by their own extravagance. Counties palatine were erected in favour of Individuals with a disregard of the public interest of which it were difficult to find an equally strong example. The rapid growth and the great prosperity of those States is not to be ascribed to their original constitution, but to the energy which triumphed over its inherent disorders. At that day, when the subject was new and the experiment untried, there was at least some apology for thus erecting great Principalities but that apology would be unavailing at present. No fact can be more clearly ascertained than that the most economical popular and effective scheme of Colonial Government of which the monarchical spirit of our Country admits, is that which prevails in the remaining British Provinces in North America. The single motive for withholding that system from any Colony is the division of the people into castes as slaves and free Men, or as Convicts and free Settlers. The only reason for postponing the establishment of it in Colonies of which the population is homogeneous is, that the Colonists at first have no leisure from the urgent cares of their situation to give to the business of Government and are too few to furnish elected and electoral Bodies of adequate numbers and authority. In this case the obvious resource is that which has been employed at the Swan River² of constituting by the Royal authority an internal

¹ The opposition of Stephen, though he was at this time merely Counsel to the Colonial Department, was the greatest obstacle in the way of Wakefield's South Australian scheme. The draft charter here criticized by Stephen was the fruit of much canvassing by Wakefield and his associates—Wakefield himself keeping in the background—and many conversations with the Colonial Office. The *non possumus* attitude of Lord Goderich, who adopted Stephen's objections, led to the dissolution of the South Australian Land Company. It was a new body, the South Australian Association, that conducted the negotiations of 1834.

² The Swan River Colony, or Western Australia, had been founded in 1829. It

legislative Council to be superseded by an Assembly on the earliest occasion at which the change may be found practicable. In a settlement really thriving that ultimate measure might usually be adopted within a very few years from its first occupation. The Projectors of the Colony of Southern Australia would probably object to this simple method that it afforded no adequate guarantee against misgovernment either by this Department or by its officers on the spot. It might with some truth be answered that those Gentlemen have neither done nor proposed to do any thing which gives them a much better claim than any other equal number of the King's Subjects to stipulate for any such guarantee. It will hereafter be seen that they scarcely offer to advance any money, or to incur any risk, or to contribute any thing but their own services in governing the Settlement, for which they require to be liberally paid. Their willingness to assume a lucrative employment connected with great patronage, little labour, and little risk, is a merit which they divide with so many of their fellow subjects that it scarcely entitles them to assume a very high tone in negotiating with the Government. But passing that remark it may be observed, that an adequate guarantee against bad government may be given without such an abdication of the Royal authority as these Gentlemen require. Should they really take the charge of Settling the Country they might for example in return have an opportunity of remonstrating against every Law before it was passed, and every appointment before it was finally made. Other securities might readily be discovered, and if all would not remove the jealousy which demands such pledges, there can be no doubt that without establishing any Company whatever multitudes of the King's subjects would be found to resort to the new Colony in reliance on the general good faith and just views of his Majesty's Government without demanding any security at all. The present plan is so close an imitation of those of the seventeenth Century that like them it proposes a surrender of all that the Crown has to yield, and offers no equivalent or compensation in return. . . .

The erection of this free settlement in the immediate vicinity of the penal Settlements will afford the Convicts a place of refuge and a powerful temptation to avail themselves of it. In new Countries it is impossible to have a large Police; and in Countries essentially free it is scarcely possible that the Police should be very active. But to repress such an evil as this it would be necessary that Southern Australia should from its first Settlement have Laws for the summary seizure, conviction and punishment of such runaways; and a strong force to render those Laws effectual. I doubt whether such Laws would be borne or such a force maintained.

was, as Dr. Mills says, 'the constant butt of Wakefield and his followers', though no doubt the hardships of its early years were not due solely to the neglect of the principles he advocated.

The Australian Agricultural Company¹ stipulated at the commencement of their undertaking against the erection of any similar Company in New South Wales. It seems to me at least doubtful whether the proposed Charter could be granted consistently with that engagement.

It is proposed to enable the Company to hold Land of any amount and to acquire 'jurisdictions' of any extent, not only in their own Province, but 'elsewhere soever'. If these words have any meaning they must point to designs of conquest and territorial aggrandizement in the Southern Hemisphere for which the history of European Settlements affords but too much encouragement.

It is proposed that Southern Australia should be settled not only by the King's subjects, but 'by any Foreigners who may be willing to become his subjects'. Now to whatever extent the Country shall be settled by Foreigners will the design of making it a place of refuge for necessitous persons in this Kingdom be defeated. . . .

The Draft does not recite that any part of the Capital has been actually paid up and invested. I conceive it however altogether indispensable that such an investment should be made before the Charter issues. Subscriptions to any amount may be had at once, and of course with the greater facility and in greater amount as the subscribers are the less solvent. The difficulty is to realize them when the necessity arises, and especially when the Company may not be in a very prosperous state. The proof of this fact has been abundantly supplied within the last seven years by the transactions of the Commercial world, and even by the correspondence of this office. I cannot think that this Charter should be granted until complete proof has been made that the Company possess not a promised Capital, but an invested Capital, of at least £200,000. Even that sum seems a small fund with which to begin the Colonization settling and improvement of such a Principality as that to which they aspire.

The Charter would authorize the Company in England to make Laws for the Government of the King's Subjects in the Colony, and to delegate the same power of legislation to any other persons upon any conditions which they (the Company) may see fit to prescribe. When the magnitude of this trust, and all that it implies, are considered it seems to me to argue either a remarkable heedlessness, or a very singular degree of confidence, to claim it at all, and still more to make the claim in terms so entirely unqualified. I should have thought that the jealousy which rejects so peremptorily the interference of the King's Ministers, who are at least well known

¹ A charter had been granted to the Australian Agricultural Company in 1824. After some years of struggle it established its right to some hundreds of thousands of acres in Northern New South Wales by 1833. Its large expenditure of capital on the opening up of the district and of the coal-mines at Newcastle, though not very profitable to the Company, were of great service to the Colony generally. The Company still survives.

and responsible persons, would have taught the necessity of some little self-distrust on the part of Gentlemen who certainly are but little known to society at large, and who have no pledges to give for their own good conduct. Yet they ask the power to do precisely what they like, and to compel the Colonists to receive their will as Law, without proposing the slightest restriction to prevent the abuse of that power. Antecedently to experience, it might have been safely predicted that an irresponsible body would abuse so extensive a trust as this. Even the East India Company with all the publicity of its proceedings, the extraordinary talents engaged in its service, and the short tenure of its privileges, was admitted by all parties to require the vigilant and direct controul of the Executive Government. The projected Corporation will certainly not need a less effective check and superintendence. . . .

When the population shall be ascertained to amount to 50,000, the adult Males are to be summoned by the Company, and a legislative Assembly consisting of Land Owners is then to be elected. The election is to be made, and the majority ascertained in such manner, and under such regulations, as the Company shall think proper; but each voter shall have one vote for each Member. The Assembly is then to determine the Constitution of the Colonial Government—to make Laws—to erect Courts—and to appoint all public officers. His Majesty is however to nominate the Governor. So long as Great Britain remains a Monarchy, his Majesty can scarcely be advised to settle a Republic within any part of his Dominions. But this Colony would be a Republic in the most unequivocal sense of the term. The King's Governor has no part assigned him, but must do precisely what the Assembly may dictate. Nor is the King himself left to enjoy the satisfaction of conferring this extraordinary franchise, and the popularity, if any, which may result from it. The Company again are to interpose between the Sovereign and the people, even in the exercise of an act of the highest possible grace.

All the Land in the Province is to be sold by Auction at a minimum price, beginning at five shillings, and after two years and a half, advancing to seven shillings and six pence an Acre. I can well understand the policy of selling rather than giving away Land—of selling by Auction—and of selling at a high fixed minimum price. But it seems to me wholly impossible to enforce, and useless to prescribe a regulation of this kind, except in reference to Lands of which the value is already known. This Province may be found to embrace many millions of Acres which in the highest possible state of culture would not be worth five shillings per Acre, or one.

The Crown is to reserve no Land, but is to purchase and pay for whatever Territory it may want, on the same terms as any private person. In the first place, therefore, nothing can be set apart for

Quays, Market-places, Roads, sites of public Buildings, or Bur[*y*]ing-places, or Gardens for the health and amusement of a civic population, unless his Majesty be prepared to pay five shillings an Acre, as a kind of penalty upon his provident care for the comfort health and advantage of his people. As the King will have no local revenue, and indeed no connexion whatever with the settlement, this may be the less important. It is however at least desirable that his Majesty should not lower the Royal authority by making such a concession, even if it adds nothing in reality to the extent of the concessions previously demanded. To whom the Lords Commissioners of the Treasury are to pay the price of the Royal Demesne, purchased of themselves, for the benefit of the Colony, is not stated distinctly. Their Lordships are certainly not to be at once payers and receivers, yet they would probably be very little disposed to confide that receipt to any other hands than their own. . . .

A Land Tax of six pence per Acre is to be levied upon all Lands in aid of the public expences of the Province. The proposal is preposterous. Farms in a new Country are and must usually be very extensive, especially in Countries which are rather fitted for pasturage than for the plough. A flock of sheep of no great number require in New South Wales two thousand acres of Land. That has been the common extent of grants to Settlers of any affluence, and the great proprietors find full employment for five or six times the same extent of Territory. Now on two thousand Acres the quit rent of six pence would be an annual quit rent of £50, chargeable on a man who had paid at the minimum price of five shillings a sum of £500 for the purchase of the soil. A man must know but little of the character or history of Colonists who believes that any such rent would be paid, or that they would endure any process of Law to enforce the collection of it. All the experience of this Department shows that covenants for the payment of quit rent may be obtained with the utmost possible facility, but cannot be enforced except at the expence of an endless contest, and the risk of insurrection.¹

The Monies raised by the sale of Lands, including what the Company are to pay for their own Land, will form an Emigration Fund, which is to be 'vested in and placed under the management 'of the said Company'. They are first to deduct the expence of managing it, and are then to employ the surplus in sending out poor Emigrants. Thus then the Company are to be receivers of public money to a very large extent indeed, supposing the undertaking successful. They are even to receive the very money which they are themselves to pay. Yet though thus becoming public accountants of a most peculiar and confidential kind, they tender the public no

¹ This criticism did not diminish Wakefield's belief in the usefulness of taxing land. See especially Report on Crown Lands and Emigration (Appendix B to the *Durham Report*: vol. iii, pp. 32 et seq., in Sir C. P. Lucas's edition).

security whatever for the proper application of the money. This of course is a question upon which the Lords of the Treasury must decide, but I suppose it scarcely possible that their decision should be in favour of granting so great a trust, except to revenue officers appointed by and directly responsible to themselves. The fund is subjected to so many charges, and would give birth to so much patronage, that the scheme might well excite jealousy and suspicion, even if the Directors had not expressly stipulated, as they have done, for the privilege of dividing £2,000 per annum amongst themselves. They propose indeed to deliver an annual account of the receipt and expenditure. But they do not propose that their account shall be regularly audited, or that any one person shall be responsible for deficiencies. To say that the Company at large shall answer [for] them is futile. The Company will probably have no property available for the purpose, except the Desks and Chairs in their Counting House.

Certain sums are limited beyond which the Company are not to be required to advance funds for the support of the local Government. The maximum of their advances is altogether to be £50,000, which is to be a loan to be repaid them with interest from the public revenue, or by the allotment of Lands estimated at five shillings an acre. Thus therefore the Company will effectually secure themselves against loss, if the scheme succeeds, and against large advances until the probability of success becomes apparent. This prudence is altogether commendable, but at the same time it detracts from any claims which the Company might otherwise have advanced to receive this Principality, if they had really been incurring a formidable risk of loss. They differ very widely, and much to the credit of their discretion, from some of the 'undertakers' of settlements in British North America, who employed princely fortunes in the enterprize taking their chance of remuneration. They were Gamblers playing for a high stake. This Company like rational men will have nothing to do with ruinous risks. It should belong to the same sobriety not to be demanding the splendid recompence of an independent sovereignty. They make no offer which gives them the least title to prefer any extraordinary demands. . . .

It were not difficult to expand these remarks, but enough may probably have been said to justify the confident expression of my opinion that this project is wild and impracticable, and that there is no reasonable prospect that it would be sanctioned either by the Lords Commissioners of the Treasury, the Attorney General, the Lords of the Committee of Privy Council for Trade, or the Lord Chancellor, the concurrence of all and each of whom would be indispensable to such a plan as that suggested in this Draft.

(signed)

JAS. STEPHEN, JUNR.
14 July 1832.

SOUTH AUSTRALIA ACT 1834 [EXTRACTS]¹

(4 & 5 *Will. IV, cap. 95.*)

Whereas that part of Australia which lies between the meridians of the 132d and 141st degrees of east longitude, and between the Southern Ocean and 26 degrees of south latitude, together with the Islands adjacent thereto, consists of waste and unoccupied lands which are supposed to be fit for the purposes of colonization; and whereas divers of His Majesty's subjects possessing amongst them considerable property are desirous to embark for the said part of Australia: and whereas it is highly expedient that His Majesty's said subjects should be enabled to carry their said laudable purpose into effect: and whereas the said persons are desirous that in the said intended colony an uniform system in the mode of disposing of waste lands should be permanently established: Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That it shall and may be lawful for his Majesty, with the advice of his Privy Council, to erect within that part of Australia which lies between the meridians of the 132d and 141st degrees of east longitude, and between the Southern Ocean and 26 degrees of south latitude, together with all and every the islands adjacent thereto, and the bays and gulfs thereof, with the advice of his Privy Council, to establish one or more provinces, and to fix the respective boundaries of such provinces. . . .

II. [His Majesty may empower Persons resident in the Colony to make Laws: Such Laws to be laid before the King in Council.]

III. And be it further enacted, that it shall be lawful for His Majesty, his Heirs and Successors, by Warrant under the Sign Manual, to be countersigned by His Majesty's Principal Secretary of State for the Colonies, to appoint three or more fit Persons to be Commissioners to carry certain Parts of this Act and the Powers and Authorities herein-after contained into Execution, and also from Time to Time at Pleasure to remove any of the Commissioners for the Time being. . . .

¹ This Act was in reality a compromise between the views of the systematic colonizers and those of the Colonial Office. It worked very unsatisfactorily: the division of responsibility between the Commissioners and the Colonial Office at home and the Governor and Resident Commissioner in the colony was one difficulty, the inexperience of the Commissioners another, and the inadequate financial provision a third. In 1840 the colony became virtually bankrupt, and the strong hand of George Grey, the future Governor of New Zealand and the Cape, was required to bring it through the crisis. By 1843 the colony was over the worst and cultivation was extending, but not until 1845-6 did immigration revive and a period of real progress set in. In 1842 the Government was assimilated to that of the ordinary Crown Colony.

IV. And be it further enacted, that the said Commissioners shall be styled, 'The Colonization Commissioners for South Australia'; and the said Commissioners, or any two of them, may sit from time to time, as they deem expedient, as a Board of Commissioners for carrying certain parts of this Act into execution.

VI. And be it further enacted, that the said Commissioners shall and they are hereby empowered to declare all the lands of the said province or provinces (excepting only portions which may be reserved for roads and footpaths) to be public lands open to purchase by British subjects, and to make such orders and regulations for the surveying and sale of such public lands at such price as the said Commissioners may from time to time deem expedient, and for the letting of the common of pasturage of unsold portions thereof, as to the said Commissioners may seem meet, for any period not exceeding three years; . . . provided always, that no part of the said public lands shall be sold except in public for ready money, and either by auction or otherwise, as may seem best to the said Commissioners, but in no case and at no time for a lower price than the sum of 12s. sterling per English acre; provided also, that the sum per acre which the said Commissioners may declare during any period to be the upset or selling price at which public lands shall be sold shall be an uniform price, (that is to say), the same price per acre whatever the quantity or situation of the land put up for sale; provided also, that the whole of the funds from time to time received as the purchase-money of the said lands, or as the rent of the common of pasturage of unsold portions thereof, shall constitute an 'Emigration Fund', and shall, without any deduction whatsoever, except in the case hereinafter provided for, be employed in conveying poor emigrants from Great Britain or Ireland to the said Province or Provinces; provided also, that the poor Persons who shall, by means of the said 'Emigration Fund', be conveyed to the said Province or Provinces shall, as far as possible, be adult Persons of the Two Sexes in equal Proportions, and not exceeding the Age of Thirty Years.

VIII. [A Resident Commissioner to be appointed.]

XVI. [Proceedings of Commissioners to be reported to Secretary of State, and laid before Parliament.]

XVIII. And be it further enacted, that for defraying the necessary costs, charges, and expenses of founding the said intended colony, and of providing for the government thereof, and for the expenses of the said Commissioners (excepting always the purpose whereunto the said emigration fund is made solely applicable by this Act), and for defraying all costs, charges and expenses incurred in carrying this Act into execution, and applying for and obtaining this Act, it shall and may be lawful for the said Commissioners from time to time to borrow and take up on bond or otherwise, payable by instalments or otherwise, at interest not exceeding £10. per centum per

annum, any sum or sums of money required for the purposes last aforesaid, not exceeding in the whole the sum of £200,000. . . . And all such sum or sums of money by the said Commissioners so borrowed and taken up as last aforesaid shall be and is and are hereby declared to be a charge upon the ordinary revenue or produce of all rates, duties and taxes to be levied and collected as hereinbefore directed within the said province or provinces, and shall be deemed and taken to be a public debt owing by the said province to the holders of the bond or bonds or other writings obligatory by the said Commissioners granted for the purposes last aforesaid.

XX. [Lands of Colony to be deemed a collateral Security.]

XXII. [Convicts not to be transported to the Colony.]

XXIII. [A Constitution to be established when there shall be Fifty thousand Inhabitants.]

XXIV. And be it further enacted, that for the purpose of providing a guarantee or security that no part of the expense of founding and governing the said intended colony shall fall on the mother country, the said Commissioners shall and are hereby empowered and required, out of the monies borrowed and taken up as aforesaid on the security of the said South Australian colonial revenue securities, to invest the sum of £20,000. in the purchase of exchequer bills or other Government securities in England, in the names of trustees to be appointed by His Majesty

4

DESPATCH FROM BOURKE TO GLENELG

(October 10, 1835) [EXTRACT]

(*P.P.*, 1836, xi.)

Having thus briefly laid before your Lordship the present state and probable progress of this unauthorized expedition,¹ I may perhaps be permitted to offer some observations upon the policy of allowing the occupation of land so distant from the seat of government and other located parts of the colony. To Mr. Batman's proceeding there appear weighty objections, not only in the irregular mode he has had recourse to for obtaining land, but on account of the absence of any provision for the control and government of the inhabitants of the intended settlement. It is hopeless to expect that any precautions he can adopt in the choice of shepherds and labourers will preclude occasional disorders among a population wholly released from legal restraint. In such emergencies there will be no accessible authority, military or civil. The undertaking must

¹ Mr. John Batman, a Van Diemen's Land settler, sailed from Launceston to Port Phillip in 1835 and proceeded to obtain from the aboriginals by a parchment 'treaty' the cession of large tracts of land in the neighbourhood. Other parties soon followed. Batman's treaty of course was disregarded by the Government. But he had founded Melbourne.

sooner or later prove a total failure, unless supported by the interference and protection of Government. If this support be afforded, it is but reasonable that the settlement should contribute to the revenue of the government which upholds it, and that its lands should be acquired under the general regulations of the colony, or under such others as His Majesty's Government may think fit to impose.

I have before had occasion to submit to the Secretary of State the opinion I entertain of the propriety of extending in a southern direction the limits within which land may be acquired from the Crown in New South Wales. On this subject I beg leave to refer your Lordship to my despatch of the 4th July 1834, No. 59, in which I communicated a proposal of Mr. James Atkinson, for the settlement of Twofold Bay,¹ by means of emigration from the north of Ireland. Though I objected to Mr. Atkinson's plan in many particulars,² I expressed myself in favour of an extension of the limits of location as far as Twofold Bay, provided the lands were to be disposed of under the existing regulations. In this opinion, however, I was not honoured with the concurrence of your Lordship's predecessor. The Earl of Aberdeen has stated in his despatch of the 25th December last, that 'His Majesty's Government are not prepared to authorize a measure, the consequences of which would be to spread over a still further extent of territory a population which it was the object of the late land regulations to concentrate'.

After this intimation, it is only on account of the question being forced upon me by the transaction I have related, that I am induced to revert to the subject. In recurring to it, I am bound to state that further reflection, and the advantages of personal observation afforded by a recent excursion to Twofold Bay and the neighbouring country, have more strongly than ever impressed me with the correctness of the opinions expressed in my despatch of July 1834. On the excursion alluded to, I found the greater part of the vast tract of fertile land lying between the country of Saint Vincents³ and Twofold Bay, depastured by flocks and herds, attended by shepherds and stockmen; the pastures already contributing largely to the wealth of the colony, and exceeding in importance many of the districts where land is disposable by sale or on lease. An export of live stock from Twofold Bay to Van Diemen's Land had commenced, and is likely to increase, and a considerable supply of grain and other agricultural produce would in all probability be furnished from that district for the Sydney market, in the event of the land there being

¹ Twofold Bay lay some 250 miles south-west of Sydney, near the present boundary of Victoria, and some ninety miles outside the 'boundaries of location'.

² The feature of the plan to which Bourke objected was the request to be allowed to buy the land at 3s. 6d. per acre.

³ This would seem to be the county of St. Vincent, the southernmost of the 'nineteen counties'. See above, p. 54, note 1.

thrown open to purchase. Admitting, as every reasonable person must, that a certain degree of concentration is necessary for the advancement of wealth and civilization, and that it enables government to become at once efficient and economical, I cannot avoid perceiving the peculiarities which, in this colony, render it impolitic, and even impossible, to restrain dispersion within limits that would be expedient elsewhere. The wool of New South Wales forms at present, and is likely long to continue, its chief wealth. It is only by a free range over the wide expanse of native herbage which the colony affords that the production of this staple article can be upheld at its present rate of increase in quantity, or standard of value in quality.

The proprietors of thousands of acres already find it necessary, equally with the poorer settlers, to send large flocks beyond the present boundary of location, to preserve them in health throughout the year. The colonists must otherwise restrain the increase, or endeavour to raise artificial food for their stock. Whilst nature presents all around an unlimited supply of the most wholesome nutriment, either course would seem a perverse rejection of the bounty of Providence; and the latter would certainly require more labour than can be obtained in the colony, or immigration profitably supply. Independently of these powerful reasons for allowing dispersion, it is not to be disguised that the government is unable to prevent it. No adequate measures could be resorted to for the general and permanent removal of intruders from waste lands, without incurring probably a greater expense than would be sufficient to extend a large share of the control and protection of government over the country they desire to occupy. One principal objection to dispersion thus becomes as powerful against its restraint.

I do not, however, mean to admit the claim of every wanderer, in search of pasture, to the protection of a civil or military force. The question I would beg leave to submit is simply this: How may this government turn to the best advantage of the colony a state of things which it cannot wholly interdict? It may, I would suggest, be found practicable, by means of the sale of land in situations peculiarly advantageous, however distant from other locations, to procure the means of diminishing the evils of dispersion, and by establishing townships and ports, and facilitating the intercourse between the remote and more settled districts of this vast territory, to provide, though but imperfectly, centres of civilization and government, and thus gradually to extend the power of order and social union to the most distant parts of the wilderness.

Such are the considerations which rendered me unwilling to oppose the settlement of Twofold Bay. The same considerations induce me to believe that it will be more desirable to impose reasonable conditions on Mr. Batman and his associates, than to insist on their abandoning their undertaking. I would propose that a township be

marked out, both at Twofold Bay, and in some eligible spot on the coast, to which Mr. Batman's party has proceeded. The two allotments and a portion of the adjoining territory might then be declared open to location, according to the existing regulations, and I have no doubt that in both places considerable purchases would at once be made. The proceeds might be at first excepted from the rule which assigns this branch of revenue as a fund for encouraging emigration, and applied in the beginning towards defraying the expenses attendant upon the new settlements. The outlay would chiefly be required for the survey and measurement of the land; the appointment of a police magistrate, with a constabulary force, and of an officer of customs. I would also earnestly recommend that a provision be made for schools, in which the children of persons of different religious tenets may be instructed, without distinction, on the plan now adopted in Ireland. The means of education being secured, I should feel disposed to leave it to the voluntary contribution of the inhabitants to provide for churches and clergy. To aid all alike where the creeds are various, seems impossible, and a partial distribution of the public funds appears nearly allied to injustice.

In the event of a township being established at Twofold Bay, it would be desirable to form a road from thence to Mināro Plains,¹ a part of which would pass over a rocky range of mountain. The remoteness of this work would render it a very desirable employment for the convicts of the second class, sent here to labour for a certain period on the public works, before assignment to settlers.

I beg leave to observe here, that it is in consideration of the capital expended by Mr. Batman and his associates, that I am inclined to recommend so early an occupation of Port Phillip. This measure would have otherwise appeared to me premature; and I should have preferred witnessing the success of the nearer establishment at Twofold Bay, before suggesting the more distinct settlement. It is with reference to Van Diemen's Land chiefly that the occupation of the neighbourhood of Port Phillip may be regarded as advantageous. I consider Twofold Bay to be ripe for settlement, as sufficient advantages are already derived from the lands behind it to admit of their purchase (by the occupiers and others) being rendered the means of the gradual introduction of the various institutions of society. To refrain from their introduction through the fear of encouraging dispersion, is, I am persuaded, a fallacious policy. The dispersion will go on, notwithstanding the discouragement, but accompanied by much evil, that might be prevented by the guidance and control of authority opportunely introduced. In conclusion, I beg leave to remark, that the unauthorized occupation of land

¹ The Minaro or Monaro plains lay among the mountains behind Twofold Bay. They had been discovered in 1829, and were just now being occupied by pioneer squatters.

beyond the limits assigned by my predecessor for the location of settlers has been so long permitted, or, more properly speaking, connived at, and has extended over such large tracts of country, as to render it necessary that Government should not delay taking some measure for asserting the rights of the Crown over those lands. I propose, therefore, to let them to the present occupiers, being of good character, upon yearly leases, at a nominal rent, intimating to the lessees that they are not thereby to consider themselves entitled to any greater protection from Government than they have hitherto enjoyed.

I have, etc.,

(signed)

RICHARD BOURKE.

5

DESPATCH FROM GLENELG TO BOURKE [EXTRACT]

P.P., 1836, xi.)

Downing-street, 13 April 1836.

SIR,

I have received your despatch, dated the 10th of October last, No. 99, reporting the proceedings of Mr. Batman and others at Port Phillip and Twofold Bay, and suggesting the measures which ought to be adopted to meet this new exigency in the affairs of your government.

I approve of the course which you have hitherto pursued on this subject, and especially of your proclamation, maintaining the right of the Crown to the soil on which these new settlements have been effected. Although many circumstances have contributed to render me anxious that the aborigines should be placed under a zealous and effective protection, and that their rights should be studiously defended, I yet believe that we should consult very ill for the real welfare of that helpless and unfortunate race, by recognising in them any right to alienate to private adventurers the land of the colony. It is indeed enough to observe, that such a concession would subvert the foundation on which all proprietary rights in New South Wales at present rest, and defeat a large part of the most important regulations of the local government.

It is altogether superfluous to enter on the present occasion into any discussion or formal statement of the principles which form the basis of the rules, according to which land is disposed of in the Australian colonies. The views of the Earl of Ripon¹ have been adopted and enforced by every one of his successors. The object of

¹ The Earl of Ripon was, of course, the former Viscount Goderich. In March 1833 he consented, under pressure, to accept the office of Lord Privy Seal in order to make room for Stanley, who wished to become a Secretary of State. He was rewarded by promotion in the peerage.

Lord Ripon's rule was to counteract the tendency of settlers in a new country to disperse themselves as detached families over its surface, and to promote the co-operation of the inhabitants in all works of public utility, and in the employment of labour and capital. But to suppose that Lord Ripon could have contemplated the concentration of the people as the ultimate end to be aimed at, or that he regarded it in any other light than as the means through which other great social purposes were to be attained, would indeed be entirely to misapprehend his policy. He deprecated dispersion, in so far as it might interfere with the advancement of the colony in wealth and other social advantages, and with the maintenance of those religious and scholastic establishments to which he was so justly attached. But he would no less have deprecated concentration at the expense of any of those objects.

If, however, my information be accurate, the eastern shores of New Holland, at least on the southern half of that great region, so far as they have hitherto been explored, whether coast-wise or inland, present a physical impediment to the close concentration of the inhabitants, with which it would be only futile to contend by human laws. The age of manufacturing industry is of course remote. Even tillage can scarcely be pursued advantageously to any great extent, while the whole surface of the country exhibits a range of sheep-walks which, though not naturally fertile, are yet, when occupied in large masses, of almost unrivalled value, for the production of the finest description of wool. New South Wales is therefore not only marked by nature for a pastoral country, but for a country of which the pasturage must, from the quality of the soil, inevitably separate the shepherds and herdsmen, and all their associates in labour, very widely from the general seat of government and from each other. The principle of counteracting dispersion when reduced to practice, must unavoidably be narrowed within the limits which these physical peculiarities of the colony dictate and require.

But that principle must also bend to a necessity of a different kind. It is wholly vain to expect that any positive laws, especially those of a very young and thinly-peopled country, will be energetic enough to repress the spirit of adventure and speculation in which the unauthorized settlements at Port Phillip and Twofold Bay have originated. The motives which are urging mankind, especially in these days of general peace and increasing population, to break through the restraints which would forbid their settling themselves and their families in such situations, are too strong to be encountered with effect by ordinary means. To engage in such a struggle would be wholly irrational. All that remains for the government in such circumstances, is to assume the guidance and direction of enterprises, which, though it cannot prevent or retard, it may yet conduct to happy results.

It may indeed admit of serious doubt whether the settlers at Port Phillip and Twofold Bay have not in reality given birth to undertakings which deliberate reflection would have recommended rather than discouraged. Each of those places will probably, at a time more or less distant, form the nucleus of a new and flourishing settlement, interchanging with the districts at present occupied in the vicinity of Sydney many articles of internal commerce, and contributing to expedite the general occupation, by the people of this kingdom or their descendants, of those vast territories in which our national wealth and industry have already, in the last half century, converted an unproductive waste into two great and flourishing provinces. In producing and multiplying such results as these it has, I believe, always occurred, and is perhaps inevitable, that the sanguine ardour of private speculation should quicken and anticipate the more cautious movements of the Government.

I have entered on these general remarks, not as supposing that they could convey to you any new information or suggestions, but from my solicitude to show that in yielding to the unforeseen exigency which has arisen, His Majesty's Government are not forgetful of or departing from those important principles of colonization which Lord Ripon so earnestly inculcated. In truth I know not how, under the new circumstances of the case, effect could be given to those principles, unless the local government should, as you propose, place itself at the head of the undertakings in which the unauthorized settlers have engaged.

Respecting the arrangements to be made for settling a form of government at Port Phillip and Twofold Bay, I advance no further than to express my general concurrence in your views, and to sanction your acting on them in the manner which you propose. I feel that writing at this distance, on a subject so novel and peculiar, I should rather encumber than assist you by attempting to enter with more minuteness into the details of your plan.

I have, etc.,

(signed)

GLENELG.

HOUSE OF COMMONS COMMITTEE ON DISPOSAL OF
WASTE LANDS IN THE COLONIES (1836): EVIDENCE
OF WAKEFIELD [EXTRACTS]¹

(P. P., 1836, xi.)

726. *Chairman.*] Is the system which you think the best for the disposal of land at present in force in New South Wales and Van Diemen's Land?—I think not. In the first place, because there is not liberty of appropriation, subject to a certain price per acre. In the next place, because the same authority which established the plan in New South Wales and Van Diemen's Land, may overturn it to-morrow, or some other authority may do so. Lord Ripon established the plan of settling there. Imperfectly as it is established, it was a plan contrary to that established by his predecessors. It might have been a very bad plan. I happen to think that it was a very good one; but it might have been a very bad one. Whether it had been good or bad, Lord Ripon alone had the power of establishing it. Since then, Lord Stanley has had the same power; Mr. Spring Rice has had the same power;² Lord Aberdeen has had the same power; Lord Glenelg has had the same power; and in the course of five years more, five other persons may have the power of overturning, by a stroke of their pen, the regulations (laws they are not fit to be called) made by their predecessors. The extreme uncertainty therefore of the system, the want of anything like a character of permanence, appears to me to render it extremely defective.

727. *Mr. Gladstone.*] Do you think that that uncertainty has prevailed practically?—I think that in the whole system of colonization it has prevailed; because I find, in every colony of which we have any good account, that the changes of plan have been constant; that almost every new authority has fancied that he had devised some new plan which was better than that of his predecessors. . . .

740. *Chairman.*] You would have the principle of a sufficient price guaranteed by Act of Parliament?—Yes. A price has been long so guaranteed in the United States of America.³

¹ The idea of this Select Committee on the Disposal of Colonial Lands undoubtedly originated with Wakefield. He could not get into Parliament through the front door, but he could address it through the keyhole. The chairman of the Committee, H. G. Ward, was a disciple of his, and his evidence was the most important and formed the foundation of the Report.

² Thomas Spring Rice, first Lord Monteagle, succeeded Stanley at the Colonial Office when the split in the Cabinet occurred on the question of the Irish Church in May 1834. From 1835 to 1839 he was Chancellor of the Exchequer. He was a good debater and a capable business man, but his official career was undistinguished.

³ The law at the time in force in the United States relative to the public lands was that of 1820, providing for sale in sections of not less than 80 acres for \$1.25 per acre, no credit being given. Earlier laws, of which there had been several, had fixed a higher price but had permitted sales on credit.

741. Would you attempt at the same time to fix the minimum price of waste land by Act of Parliament?—The United States fix and alter the minimum price by means of an act of the legislature, and by no other means; but I doubt whether it might not be more desirable to allow to some special authority the power of fixing a price; for circumstances might occur in which it would be desirable to alter the minimum price, either to raise or to lower it. In that case no doubt application might be made to the Legislature for an alteration in the price; but if there were somebody specially charged and made responsible for the execution of the duty under an Act of Parliament, I should consider that authority more likely to fix the price well than the Legislature itself. If the principle were established by the Legislature, then the carrying of it into execution ought, I think, to be confided to a special and responsible authority, just as the principle of the new poor law is being carried into execution by the special and responsible authority of the poor law commissioners. . . .

779. Mr. *Poulett Scrope*.¹] Would you have the person empowered to determine the price resident in this country or in the colonies?—I imagine that a good executive power for carrying that law into effect would consist of a board of commissioners here, and of sub-commissioners in the colonies, acting under the orders of the superior board, which is the case in the United States. It should be remembered that the district land officers of the United States are entirely subject to a board which sits at Washington, and that, in point of fact, the distance between the district land officers of the United States and the central board is as great, in some cases, and in some cases it is greater, than the distance between England and many of her colonies; and yet the system appears to work remarkably well there. So that though the chief authority would reside here, in order to apply the general principle to all the colonies which would call for a central authority, the district commissioners would reside, each of them, in the colony to which the principle was directed.

823. Mr. *Roebuck*.²] By what means would you get at the period at which the colony should have the power?—I believe there is a period in the existence of every important colony when the power of independence arrives; and that, let the mother country wish what it may, the colony will make laws of every sort and kind, and among others, laws relating to waste land.

824. Then you suppose, till that time arrives, the best place to

¹ George Poulett Scrope, the brother of Lord Sydenham, had a considerable reputation as a political economist, though geology was the field in which he was most distinguished.

² John Arthur Roebuck was a famous free-lance Radical M.P. He was born in Madras and brought up chiefly in Canada, and in 1835 he became agent in England for the Lower Canadian House of Assembly. He was always an opponent of Wakefield's theories on colonial lands.

determine this matter is the metropolis?—I think so, provided that great pains be taken to insure responsibility, and great in proportion to the distance. The difficulty is very great when you have to wait months before you can receive a letter in answer by return of post. The strongest motive for doing well ought to be created in the administrators of any law which was to take effect at a great distance from the place where the law was made.

825. And you think that all those difficulties are more than counter-balanced by the advantages to be derived from the centralization of the power in the metropolis?—I think that they are.

826. That is to say, always with regard to the advantage of the colony itself. You could find means for creating stronger motives acting upon the commissioners here than could be created upon persons acting under the immediate supervision of the legislature of the colony, and most interested in the proper administration of the power of colonization?—That would depend upon the degree of intelligence in the legislature of the colony, and the nature also of the legislature. The colony of Upper Canada, for instance, may possess intelligence sufficient to carry out a new principle of colonization; the colony of South Australia, the majority of the inhabitants of South Australia, I feel quite satisfied, at this moment, would be quite incapable of comprehending the objects of the plan under which that colony is founded; so that it appears to be a question of the state of mind in the colony, and the state of power.

827. But the Committee has supposed that Parliament had determined to confer upon the colony a domestic legislature: do you not suppose that there would be sufficient intelligence in that body, formed into a domestic legislature, to determine all the questions respecting colonization, if there were sufficient intelligence to determine all other matters respecting legislation in the colony?—It might be; but the examples which I have adduced would go to show that in the early stage of a colony there is not, in the majority, a sufficient degree of intelligence for the purposes of government. And I think that may be readily enough accounted for. In the earliest stage of a colony the population consists of persons who have been brought up in the old country; the majority of them necessarily of the labouring class, who never have had any motive for qualifying themselves to make laws; who perhaps do not know the meaning of the word legislation, or hardly know it, many of them; and in this state of the colony, it appears to me that the colony is equally unfit to make general laws as it is to make laws relating to the disposal of waste land. It appears in all our early colonies of America, that although the power of local self-government was universally given to the colony, it was not universally given to the labouring classes; it was sometimes given to individuals. Amongst them they certainly carried with them from England what may be called a portion of the

supreme power; a sufficient portion for themselves; but that portion which they carried away with them often resided in a single person, as in the case of William Penn, who was an absolute despot; who was the sole legislator of the colony, with the power of life and death. . . .

830. . . . Do you not think that it necessarily follows in the first place, supposing the colony had a domestic legislature, that the proper place in which the power should be placed to whom the functionaries are responsible is the colony itself?—No; because there arises now a new question. For the particular benefit of the colony then existing, that may be the case; but it may be for the interest of that particular colony to dispose of the waste land in a manner very injurious to their successors, to their posterity, to persons who may yet be coming into that country from the mother country. I can easily suppose a case in which the colonial legislature, not deterred by motives of shame, should determine to put, no doubt, a restriction upon land, but should determine to put the proceeds of sale into their own pockets; that is, though they should be representatives under the control of the people of the colony. They would not be under the control at all of another class of people, greatly interested in their not taking this course, because that other class of people would not yet have reached the colony, but would be on its way thither.

831. Do you mean, when you say putting the money into their own pockets, as individuals, or as a legislature?—As individuals, and as a nation, they might do precisely that which the colonial governments have hitherto done. The authority has existed in Canada, yet what has it always done? It has always jobbed the lands for its own advantage; it has always acted contrary to the interests of those who were coming out; to the interests both of the mother country and of the colony. . . .

833. Does not that rather militate against your view of the case?—No; because the sole power is not resident with the governor; the council has had a voice as well as the governor.

834. The council being solely responsible to the power of England?—That I disbelieve; the sole responsibility. I think there is a great responsibility to opinion; a very considerable responsibility imposed on the council in such a colony as Canada. . . .

1008. Are not men more governed by that which they conceive to be their own interest, namely, their own immediate private interest, than by any interest to be derived from the general good; and is it not more likely that a small body of colonists, who would get large increased profits from a good system of colonization, would be more ready to look keenly to the way in which land was disposed of, than the but half-interested larger number of persons residing in the mother country?—I think not. I know that the legislature of this country represents but a portion of the people, that I cannot speak of it as representing the whole of the people; but even within

the legislature I find the greatest possible personal interest in a good system of colonization. I find Ireland in such a state that there is a fair prospect of the whole rent being eaten up by a mass of paupers; I find a very strong demand, and a growing demand, for the extension of the English poor-law to Ireland; and there is ample evidence before Parliament that if the English poor-law should be extended to Ireland, most of the landlords of Ireland would be ruined. The landlords of Ireland, as well residents as absentees, have a very great influence in the legislature of Britain; I find therefore in the metropolitan legislature the strongest possible personal interest in a good system of colonization.

7

LETTER FROM STEPHEN TO SPEARMAN

(January 9, 1837) [EXTRACT]¹

(*P. P.*, 1837, xliii.)

The advantages of a local acquaintance with the colony on the part of agents employed in the selection of emigrants are obvious. On this point Lord Glenelg fully concurs in the opinion expressed in the report of the New South Wales Committee on Emigration,² and although he was at first disposed to agree with their Lordships in regarding the plan adopted by Sir R. Bourke as involving an unnecessary amount of expenditure on account of agency, and consequently directed the governor's attention to this point, he is on further consideration led to doubt whether any considerable diminution of expense would be effected by the substitution of any other equally efficient agency. On comparing the remuneration proposed by Sir Richard Bourke to these agents (exclusive of the allowance made to them for a limited time, while engaged in the selection of emigrants) with that which is received by naval surgeons appointed by the Admiralty to the superintendence of convict ships, Lord Glenelg finds that the difference in amount is very trifling. It is indispensably necessary that a surgeon should accompany each ship chartered for the conveyance of emigrants to the Australian Colonies; and Lord Glenelg concurs in the opinion of the New South Wales Committee as to the expediency of engaging naval surgeons for this service. Advantages may also be derived from the emigrants being accompanied to the colony by a person of known character and respectability, with whom they have been in personal communication previous to their embarkation. His Lordship, at the same time, considers

¹ A. Y. Spearman was at this time permanent head of the Treasury with the title of Assistant Secretary.

² A Committee of the Legislative Council of New South Wales, appointed in May 1835, had considered the whole question of assisted immigration and suggested certain improvements.

this arrangement at present only experimental, leaving it to be decided by experience, and after further communication from Sir Richard Bourke, whether a more efficient and less expensive agency might not be obtained by the employment of agents in this country, who have acquired practical information by a previous residence in the colony, and who should be exclusively engaged in the selection of emigrants without being required to conduct them to the colony. His Lordship, however, entertains a decided opinion, that whatever may be the ultimate resolution on this point, which is a matter capable of easy adjustment, some presiding agency should permanently exist in this country, for the purpose of superintending the details of the which must be carried on here, of securing uniformity in the proceedings of the different agents, and of supplying the deficiencies which would necessarily attach to the unassisted and uncombined efforts of separate individuals in their respective spheres of operation. The New South Wales Committee anticipating this necessity, assumed that the emigration committee in London would continue to afford their valuable services, and that through this channel, the agents connected with the colony might derive that local information and assistance which are essential to the due selection of emigrants. Lord Glenelg is of opinion that this has become far too important a branch of the public service to be committed to a gratuitous and desultory agency, and that it ought, without delay, to be intrusted to a responsible officer of the Government, acting under the authority and instructions of the Secretary of State, and receiving a competent remuneration for his services.¹

8

LETTER FROM SYDENHAM TO A FRIEND

(November 23, 1840) [EXTRACT]

(Poulett Scrope, Life of Lord Sydenham.)

For emigration I have done *here* nearly all that is possible, and little enough it is; yet I do not see how to do more. Wakefield's plan of bringing out labourers by the sale of lands is utterly impracticable in these colonies. Land is worth nothing except through the labour that is bestowed upon it; and that is barely remunerated, even putting out of the question the cost of transport. The whole land revenue, arising from *sales*, of the two Canadas does not reach 20,000*l.* a year—which might bring out 2000 or 3000 people. This year we have 23,000 by voluntary emigration, and shall have probably double next year! To talk of an emigration fund from land, then, is ridiculous. The only thing to do is to encourage voluntary emigration by affording

¹ T. F. Elliot (see above, p. 18, note 1) was appointed 'Agent-General for Emigration' in April 1837.

all the assistance in one's power to forwarding and placing the people when they arrive, and either *locating* them or getting work for them. This I have done. I have despatched above 7000 to the Upper Province at the expense of Government, who would not otherwise have been able to get on; and as many from Quebec to this place (Montreal) besides. For here again is one of the capital blunders made in England upon this subject. You treat *Quebec* as Canada—think that when you have thrown a shipload of poor starving emigrants under the rock there, you have placed them in a situation to provide for themselves. On the contrary, they have to go four to five hundred, many eleven or twelve hundred miles further, before they can do so. And this is expensive, dilatory, and difficult. But suppose them arrived at their destination, what is to become of them? Land they cannot purchase; and if it is given to them it is of no use, for they must starve for a twelvemonth till it yields a crop. Besides which, Irish and English labourers know no more of clearing and settling a forest than they do of the longitude. It would take them a day to cut down a tree, which a back-woodsman will do in three minutes. Well then, they may labour for wages. But few people can afford to pay for labour. Labour must be valuable according to the value of what it produces; and the farmer here can no more give a dollar a day, with his prices, than he could a guinea. This is *the fact*. It is true there is a great outcry for labourers, and more labourers; but when it comes to the point of hiring them, unless it be during the harvest, every farmer in Upper Canada will tell you that he cannot pay them. Even this year one half of my 22,000 emigrants must have been unemployed, or have gone to the States, but for the public works I was carrying on.

This is a bad picture of the chance for emigration on a large scale, of which you talk so loudly in England. But although I consider it impossible to frame any great plan such as people seem to look for, and which has been hinted at but never *explained* in Lord Durham's report, I by no means despair of good. I shall send Dr. Rolph to England again to agitate,¹ and if possible promote the sending off people by themselves, their landlords, or their parishes; and in this way I have no doubt of getting at least twice as many next year as this. I shall devote all my means on this side of the water to settling them either with people who may be able to afford to pay for labour—of which there are some, though not many—or to *locating them in parts of the country where public works are being carried on, so as to combine settlement with wages*. This, by the by, I have already done to great advantage this year; but not by sticking the emigrant himself there, who knows nothing of clearing, or 'life in the bush;' but by

¹ This Thomas Rolph, employed by the Canadian Government as an Emigration Agent in England, must not be confused with John Rolph, one of the leaders of the Upper Canada rebellion and at this time a refugee in the United States.

making a place for *his* labour, by transplanting an old woodman further into the forest. Lastly, by undertaking as many public works as I can possibly get through—where the emigrants can be sure of employment—may save money—become accustomed to the country, climate, and hardships of *bush life*, and eventually provide for themselves as settlers. By directing all my resources to these objects, and combining them, I believe that much good may be produced in five or six years; thirty or forty thousand a-year being introduced, of whom probably two thirds may remain and make good workmen. But to attempt to do more, in this colony, is a mere delusion.

9

MINUTE OF STEPHEN ON DESPATCH FROM
LORD FALKLAND [EXTRACT]

(C.O., 217/178.)

19 Jan. [1842]

... It is at least curious to see how both in Canada and now in Nova Scotia abstract theories supposed to be of universal application are made to bend to practical difficulties of which the mere theorist was ignorant or heedless. Lord Sydenham returned to the plan of giving away small lots of Land to poor Settlers, and here Lord Falkland exhibits the advantage of allowing such persons to have the Land for a very low price, or even for nothing. I have very little doubt that while too much cannot be said against the practice of making large Grants of Land as a matter of favor to the rich, great exaggeration has prevailed as to the evil of making small allotments to the poor. The three thousand hard working men from the North of Scotland who have fixed themselves on these poor soils in Nova Scotia have probably become a permanent accession to the strength, and will ultimately add much to the wealth of the Province. Had it been possible to enforce against them the so much vaunted 'principle' they would by this time have been American Citizens. On the North American Continent they will never become Paupers, nor consume more of the public Stock of wealth than they contribute to it. I cannot but believe that the unqualified doctrine of never giving away Land has done much mischief in British North America, and has driven away many thousands of Immigrants who would at least have maintained themselves, and whose children would have lived in the Queen's Dominions in a state of Comparative Wealth.

J. S.

MINUTE OF STANLEY ON DESPATCH FROM
SIR W. COLEBROOKE¹

(C. O. 188/79.)

Jan 18. [1843]

Refer this Dispatch to the Com^{rs}.—When the Land Revenue is handed over to the Local Legislature, it is very difficult, and perhaps would not be advisable for the Home Government to interfere, except by advice and suggestion, with a course in which the Governor and Legislature appear unanimous. But the local law, whatever it be, ought not to be habitually violated.

S.

II

AUSTRALIAN LAND SALES ACT 1842 [EXTRACTS]

(5 & 6 *Vict.*, *cap.* xxxvi.)

II. . . . Be it enacted, That the Waste Lands of the Crown in the Australian Colonies shall not, save as herein-after is excepted, be conveyed or alienated by Her Majesty, or by any Person or Persons acting on the Behalf or under the Authority of Her Majesty, either in Fee Simple or for any less Estate or Interest, unless such Conveyance or Alienation be made by way of Sale, nor unless such Sales be conducted in the Manner and according to the Regulations herein-after prescribed.

III. Provided always, and be it enacted, That nothing in this Act contained shall extend or be construed to extend to prevent Her Majesty, or any Person or Persons acting on the Behalf or under the Authority of Her Majesty, from excepting from such Sale, and either reserving to Her Majesty, Her Heirs and Successors, or disposing of in such other Manner as for the public Interests may seem best, such Lands as may be required for public Roads or other internal Communications, whether by Land or Water, or for the Use or Benefit of the aboriginal Inhabitants of the Country, or for Purposes of Military Defence, or as the Sites of Places of public Worship, Schools, or other public Buildings, or as Places for the Interment of the Dead, or Places for the Recreation and Amusement of the Inhabitants of any Town or Village, or as the Sites of public Quays or Landing Places on the Sea Coast or Shores of navigable Streams, or for any other Purpose of public Safety, Convenience,

¹ Sir W. M. G. Colebrooke was Lieutenant-Governor of New Brunswick from 1841 to 1847. He was also at various times one of the Commissioners appointed by the Colonial Office in the twenties to inquire into the affairs of the Eastern Colonies, Lieutenant-Governor of the Bahamas, Governor of the Leeward Islands, and Governor of the Windward Islands. He was a conscientious official, but without any claim to distinction.

Health, or Enjoyment; and provided also, that nothing in this Act contained shall extend or be construed to extend to prevent Her Majesty, or any Person or Persons acting on Her Behalf or under the Authority of Her Majesty, from fulfilling any Promise or Engagement made or hereafter to be made by or on the Behalf of Her Majesty in favour of any Military or Naval Settlers in the said Colonies respectively, in pursuance of any Regulations made by Her Majesty's Authority in favour or for the Benefit of any such Settlers.

IV. And be it enacted, That, save as herein-after is excepted in reference to Blocks of Twenty thousand Acres of Land or upwards, no Waste Lands of the Crown in any of the said Colonies shall be so conveyed or alienated as aforesaid until the same shall have been surveyed, and shall have been delineated in the public Charts of such Colony, in such Lots as shall be subsequently offered and put up for Sale, which Lots shall in no Case, save as aforesaid, contain an Area exceeding One superficial Square Mile.

V. And be it enacted, That under and subject to the various Provisions and Regulations herein-after contained, the Governor for the Time being of each of the said Colonies is hereby authorized and required, in the Name and on the Behalf of Her Majesty, to convey and alienate in Fee Simple, or for any less Estate or Interest, to the Purchaser or Purchasers thereof, any Waste Lands of the Crown in any such Colony. . . .

VI. And be it enacted, That once at the least in each of the Four usual Quarters of the Year, and on as many other Occasions as to the Governor for the Time being of any such Colony shall seem meet, there shall be holden One or more public Sales by Auction of the Waste Lands of the Crown within such Colony; and that every such Governor shall, by Proclamation or Proclamations, to be from Time to Time by him for that Purpose made in manner herein-after mentioned, declare with all practicable Precision the Times and the Places at which such Auctions will be holden, and what are the Lands to be offered for Sale at each of such Auctions, and what are the upset Prices at which they will be offered for Sale; and it shall not be lawful for any such Governor to sell or to cause to be sold any such Lands, unless they shall have been specified as about to be offered for Sale by such Proclamation as aforesaid, issued at some Time within Three Calendar Months next preceding the actual Sale thereof.

VII. And be it enacted, That in every such Proclamation as aforesaid the Lands specified therein as about to be offered for Sale shall be distinguished into Three separate Classes, the First of which shall be described as Town Lots, the Second of which shall be described as Suburban Lots, and the Third of which shall be described as Country Lots; and within the First of the said Classes shall be comprised all Lands situate within the Limits of any existing Town

to be in that Behalf especially named and described by the Governor, or within any Locality to be designated by the Governor as the Site of any Town to be thereon erected; and within the Second of the said Classes shall be comprised all Lands situate within the Distance of Five Miles from the nearest Point of any existing or contemplated Town, unless in any Case the Governor for the Time being of any such Colony shall see fit to exclude any such last-mentioned Lands from the said Class of Suburban Lots, on the Ground that they will not in his Judgment derive any increased Value from their Vicinity to any such Town; and within the Third of the said Classes shall be comprised all Lands not comprised within the said First and Second Classes: Provided nevertheless, that nothing herein contained shall extend or be construed to extend to prevent the putting up for Sale of Lands of any One or more of the said Classes apart from Lands of both or either of the other Classes.

VIII. And be it enacted, That none of the Waste Lands of the Crown shall be sold at any such Auction in any of the said Colonies unless the Sum of One Pound at the least for each Acre of such Land be then and there offered for the same, which Sum of One Pound per Acre shall be the lowest upset Price of any of the Waste Lands of the Crown in any of the said Colonies,¹ but which lowest upset Price shall be liable to be from Time to Time raised in any such Colony in manner herein-after mentioned.

IX. And be it enacted, That it shall be lawful for the Governor of any such Colony, at his Discretion, by any such Proclamation or Proclamations as aforesaid, to raise the lowest upset Price of the Waste Lands of the Crown in any such Colony. . . .

XI. And be it enacted, That in respect of any Part not exceeding One Tenth of the whole of the Lands of the Third Class for the First Time offered for Sale at any such Auctions as aforesaid it shall be lawful for any such Governor, by any such Proclamation or Proclamations as aforesaid, to name an upset Price higher than the lowest upset Price of Waste Lands in the Colony, and such excepted Lands of the Third Class shall be designated as 'Special Country Lots'; and that in respect of any Lot or Lots consisting of Lands either of the first or of the second Classes, to be comprised in any such Sales, it shall be lawful for the Governor for the Time being to fix the upset Price of any such Lot or Lots at any Sum exceeding the lowest upset Price of Waste Lands within the Colony in which the same may be situated, and from Time to Time to raise or lower, as to him may seem requisite for the public Interests, the Price of such Lots consisting of Lands of the First or the Second Class, so always

¹ £1 per acre was the price already in South Australia and in all New South Wales except the 'nineteen counties'; and the House of Commons Committee on South Australia in 1841 had recommended that the price should be uniform throughout the Australian Colonies.

that such upset Price shall never be less than the lowest upset Price of Waste Lands within the said Colony.

XII. And be it enacted, That no Land comprised in the said First or Second Classes shall be sold in any of the said Colonies otherwise than by public Auction; but that any Lands comprised in the Third of the said Classes shall and may be sold by the Governor for the Time being of the Colony within which the same are situate by private Contract, if the same shall first have been put up to public Auction in manner aforesaid, and shall not have been sold at such Auction; provided that no such Land shall be so sold by any such private Contract for less than the upset Price at which the same was last put up for Sale by Auction. . . .

XIII. And be it enacted, That no Waste Lands of the Crown shall be sold in any such Colony by any such private Contract as aforesaid except for Ready Money, to be paid at the signing of such Contract; and that no Waste Lands of the Crown shall be sold at any such public Auction as aforesaid unless on Condition of paying at the Time of the Sale, in ready Money, a Deposit, the Amount of which shall be fixed by any such Proclamation or Proclamations as aforesaid, at not less than One Tenth of the whole Price, nor unless the Purchaser or Purchasers shall contract to pay the Residue of such Price within One Calendar Month next after the Time of such Sale by Auction, and shall further contract, that on Failure of such Payment the Deposits shall be forfeited, and that the Contract shall be thenceforward null and void.

XV. And be it enacted, That if any Person or Persons shall offer to purchase from the Governor of any such Colony by private Contract any Block of unsurveyed Land comprising Twenty thousand Acres or more, and forming, as nearly as the natural Landmarks of the Country will admit, a Parallelogram, of which no one Side shall be more than twice the Length of any other Side, it shall be lawful for the Governor, by any such private Contract, to effect any such Sale, on such Terms and Conditions as to him shall seem meet, provided that such Lands be not sold for less than the lowest upset Price of Lands per acre in the Colony in which the same may be situated, and provided that the Purchaser or Purchasers of any such Lands shall not be entitled to any Survey thereof, except so far as may be necessary to ascertain the external Marks and Bounds thereof.¹

XVI. 'And whereas it may be convenient that Means should be

¹ This clause was doubtless suggested by the 'special survey' provisions of the South Australian land regulations and the regulations of May 1840 in New South Wales (below, p. 228, note 1). They provided that any purchaser of 6,400 acres or upwards could apply for a special survey, to be made by the Government, of a block of that extent; and there was no such limitation as to shape as is embodied in this clause: the object was to attract capital and open up the back country, but the purchase in the course of the recent land boom of many of the most desirable blocks in South Australia and Port Phillip had made colonial opinion decidedly hostile to the idea, and Sir G. Gipps shared this hostility.

provided for the Payment within the United Kingdom of the Purchase Money of Waste Lands of the Crown within the said Colonies: And whereas by a Warrant under Her Majesty's Sign Manual, bearing Date on the Tenth Day of January One Thousand eight hundred and forty, Her Majesty was pleased to appoint certain Persons therein named to be, during Her Majesty's Pleasure, Commissioners, in the United Kingdom, for the Sale of the Waste Lands of the Crown in Her Majesty's Colonies, and for superintending the Emigration of Her Majesty's Subjects to such Colonies;' be it therefore enacted, That if any Person or Persons shall pay, for the Purchase of Waste Lands of the Crown in any of Her Majesty's Australian Colonies, any Sum or Sums of Money to the Commissioners of Her Majesty's Treasury of the United Kingdom of Great Britain and Ireland, or to any Person or Persons to be appointed by the said Commissioners of Her Majesty's Treasury, or any Three of them, to receive the same, the said Commissioners of Colonial Lands and Emigration for the Time being are hereby authorized and required, subject to such Rules as shall be prescribed for their Guidance in that respect by the Commissioners of Her Majesty's Treasury, to grant, under their Hands and Seal of Office, Certificates to any such Purchaser or Purchasers of the Amount of any such Payments, which Certificates shall, on Production thereof to the Governor for the Time being of any such Colony, be received by him as equivalent to the Amount of Money for which the same shall respectively be given, so far and only so far as the same may be tendered to such Governor in Payment for the Price of any Waste Lands of the Crown to be there purchased, either at public Auction or by private Contract, in the Manner and subject to the Regulations by this present Act prescribed in respect of such Purchasers.

XVII. And be it enacted, That nothing herein contained shall extend or be construed to extend to prevent the Governor of any of the said Colonies from granting to any Person or Persons a Licence for the Occupation, for any Time not exceeding Twelve Calendar Months from the Date thereof, of any Waste Lands of the Crown in any such Colony, or a Licence for felling, removing, and selling the Timber growing on any such Lands; and that no such Lands shall be sold until after the Expiration of the Licence for the Occupation of the same.

XVIII. And be it enacted, That all Charges which shall be incurred in any of the Australian Colonies for the Expense of the Survey and Management of the Waste Lands of the Crown therein, or for effecting such Sales by Auction or by private Contract, or otherwise in carrying into effect the Provisions of this present Act within any such Colony, shall in the first instance be chargeable upon and defrayed from the Proceeds of Sales of Waste Lands, unless Provision shall otherwise be made for defraying such Charges by any Law or Ordinance to be enacted by the local Legislature of any such Colony.

XIX. And be it enacted, That, subject to the Charge above mentioned, the gross Proceeds of the Sales of the Waste Lands of the Crown in each of the said Colonies shall be appropriated and applied to the public Service of the said Colonies respectively, in such Manner as Her Majesty, or the Commissioners of Her Majesty's Treasury, or any Three of them, shall from Time to Time direct: Provided always, that One equal Half Part at least of such gross Proceeds shall be and the same is hereby appropriated towards defraying the Expense of the Removal from the United Kingdom to the Colony wherein such Revenue accrued of Emigrants not possessing the Means of defraying the Expenditure of their own Emigration thither. . . .

XXII. And be it enacted, That by the Words 'Australian Colonies', as employed in this Act, are intended and described the Colonies of New South Wales, Van Diemen's Land,¹ South Australia, and Western Australia, and New Zealand, with their respective Dependencies, as such Colonies are now or shall hereafter be defined and limited, and also to any other Colonies which may hereafter be established within any of the existing Limits of the said Five Colonies. . . .

12

DESPATCH FROM STANLEY TO GIPPS (July 29, 1842) [EXTRACT]

(*Historical Records of Australia, Series I, vol. xxii.*)

As regards the renewed propositions for raising a Loan for defraying Immigration charges, after full consideration of all the arguments adduced in favor of this course of proceeding and of the general state of the Colonial Finances, Her Majesty's Government adhere to the opinion, which they had previously held in regard to the inexpediency of any such anticipations of the Land Fund or other resources of the Colony.

I have only further to observe that the large amount of Immigration in the last and the present year must fully have counteracted any temporary effect of the discontinuance of transportation in regard to the introduction of Labourers; and that, although the Land Sales actually effected may not be a perfect indication of the increased demand likely to arise for labour, those Sales would appear to be the best available criterion of the probable requirements of the Colony in this respect, and that the expenditure for the purpose may be advantageously regulated by their produce.

In conclusion, I have to state that, entertaining the opinions above mentioned as to the inexpediency of authorizing anticipations of the

¹ By Act of 1845 (8 & 9 Vict., cap. 95) this Act was suspended in Van Diemen's Land so long as convicts were transported to the colony.

Income that may arise from Land Sales, and adverting to the extent of the Emigration to New South Wales in the course of the last year, the Government cannot but concur in the recommendation of the Land and Emigration Commissioners, with respect to the inexpediency of authorizing the resumption of Emigration on Bounty during the present year.

I have, &c.,
(signed) STANLEY.

13

DESPATCH FROM GIPPS TO STANLEY [EXTRACTS]
(*Historical Records of Australia, Series I, vol. xxiii.*)

Government House, 17th January, 1844.

MY LORD,

I have the honour to transmit herewith a copy of an Address to myself from the Legislative Council of this Colony, voted on the 20th December last, and presented to me a few days afterwards, wherein are embodied certain Resolutions of the Council on the subject of the Sale of Crown Lands in the Colony. The Address was adopted on the Report of a Select Committee appointed by the Council on the 15th August, 'to enquire into the provisions of an Act passed in the 5th and 6th years of the Reign of Queen Victoria, for regulating the price of Land in the Australasian Colonies, so far as they apply to New South Wales.' . . .

The Report may, I believe, be considered as a protest on the part of the Committee against the doctrines on Colonization, which led to the passing of the Crown Lands Act, 5th and 6th Vict., Ch. 36; in commenting on it, therefore, it may be convenient that I should commence by reminding Your Lordship that I have never been a blind follower of what is called the Theory of Systematic Colonization, or the South Australian System; and that, though I fully admit many of the principles on which that theory is founded, I have ever regarded as visionary the attempt to carry out the principles of the theory equally in all Colonies, notwithstanding the differences which they present to the most superficial observer. I have particularly, in respect to New South Wales, objected (and objected successfully) to the abolition of Sales by Auction;¹ and still more strongly have I endeavoured to shew how inapplicable to New South Wales, or indeed to any pastoral Country, is what is called the theory of concentration or the anti-dispersion principle. I am also strongly

¹ In May 1840 Lord John Russell, on the advice of the Colonial Land and Emigration Commissioners, issued regulations introducing into the Port Phillip district the system of sale at a uniform price. Gipps withheld from sale under the regulations all land previously advertised or lying within five miles of a town, and sent home a very able memorandum (Dec. 19, 1840) putting the case for sales by auction as against the uniform price. Gipps gained his point, and the regulations were revoked.

persuaded that the business of Colonization should be retained in the hands of Government, and not delegated to Companies; but with these exceptions (and perhaps a few others of minor importance), I have, during the whole course of my Government, expressed my adherence to the principles which have grown into public favor during the last 12 or 14 years, and which may now, I believe, be said to be adopted by Her Majesty's Government. Your Lordship consequently will not be surprised to learn that I am constrained to differ, in many particulars, from the Report of the Select Committee, and also from the Resolutions of the Council.

The Report nevertheless speaks, I readily acknowledge, the sentiments of a vast majority of persons of all Classes in New South Wales, and especially it does this in respect to the upset price of land. The persons may be comparatively few, who go the length of ascribing the present embarrassments of the Colonists to the rise in the Minimum price of Land; but the opinion very generally prevails that the Colony will not prosper, until the old Minimum price be re-established. There are few perhaps who, like the Surveyor General of New South Wales¹ . . . wish to see the old system of free grants re-established; but there are very many who think that the prosperity of the Colony will be proportioned to the facility which may be afforded in it for the acquisition of Land.

The following passage in the Report of the Committee may perhaps be taken as a fair illustration of the principle, which pervades it:—

'The Waste Lands of the Territory cannot be considered a source of profit to the Community, until they fall into the occupation of private individuals. If, by the application of private means and industry, they become sources of profit to individuals, they will benefit the Community at large. The Country at large therefore, and even the Empire itself, is interested in bringing all its Territory under the management of private industry; and that can only be done by allowing a *certain facility* in obtaining it to private individuals. So far, however, as Australia is concerned, there is no such facility; on the contrary, there is a prohibitory price on the soil, and, until it is withdrawn, the Australian Colonies cannot prosper.'

I need scarcely observe that this is a revival of the arguments, which led to the excessive grants to individuals, now generally considered to form in nearly every Colony the greatest bar to improvement.

What the Committee moreover wish for is, I apprehend, not a facility in the mere *occupation* of land, for that is made easy enough under the Crown Lands Occupation Act (2d Vict., No. 27),² but a

¹ The Surveyor-General, Sir T. L. Mitchell, held the office from 1828 until his death in 1855. He was also one of the most famous of Australian explorers.

² The Crown Lands Occupation Act passed by the Legislative Council in 1839 required squatters to pay both a fixed licence fee and an assessment on stock. This assessment went to support a Border Police, whose duty it was, under the super-

facility in the acquisition of the fee simple of it. The meaning of the term 'certain facility' is not explained by the Committee; but it may perhaps be gathered from a preceding paragraph, in which the Lands are divided into four classes, estimated respectively at 6d., 2s. 6d., 5s., and 20s. per acre. This classification and valuation cannot be strictly correct; because, allowing the poorest Land in the Colony to be worth 6d. an acre, and the richest only 20s., there must still be Land of every intermediate value; but, even if for the sake of argument the classification be adopted, it does not seem to me to be in any way conclusive against the policy of a high Minimum price.

Many Persons in New South Wales fall into the strange error of considering the establishment of a Minimum price of 20s. equivalent to a declaration on the part of the British Government that the generality of the Waste Land of Australia is worth 20s. an acre; whereas the Government has done no more than declare it will not for the present sell any Land which is not worth 20s. an acre.

Daily complaints are put forth of the hardship of being governed by a Secretary of State, who does not know that 3 acres of land are required in Australia to feed a Sheep; or who, knowing this fact, persists in maintaining that these three acres are worth 20s. each; and the barren rock or scrub, as it is called, is derisively pointed at as the Land, which Parliament at the instance of the Secretary of State has declared to be worth 20s. an acre. I, however, on the contrary consider the Minimum price of 20s. per acre to amount only to a declaration on the part of Parliament that none but the best Land shall at present be sold; and I am not prepared to admit that such a determination on the part of the Legislature is unwise. If the object were solely to raise a revenue, I might say otherwise; but I stated, in my place in the old Legislative Council on the 9th Sept., 1842, that 'I am entirely opposed to the selling of large breadths of Land at a low price, for the purpose of raising a temporary Revenue. I am an advocate for selling at a comparatively high price, or not at all'; and the events, which have occurred in this Colony since Sept., 1842, are not of a character to cause me to alter these opinions. The quantity of Land in the market, the property of individuals, is not diminished; nor is it, in my opinion, in any way desirable to revive (if that were possible) the spirit of speculation, which led to such extensive sales of land between the years 1835 and 1841.

The main argument advanced by the Council is that Land for grazing purposes is not worth 20s., or even 5s. per acre; and this may very readily be admitted; but it does not thence follow that the Government should sell it for 5s. It seems to me premature to pro-

intendence of the District Commissioners of Crown Lands, to restrain unauthorized occupation. Previously there had been no real means of enforcing the law.

nounce that Land in Australia is valuable only with reference to its capacity for feeding Sheep; and I see no reason to conclude that the Proprietor of Sheep, which are fed upon any Land, ought to be the proprietor also of the Land itself. If indeed Settlers were positively prohibited, or effectually precluded from depasturing their Stock on Crown Lands without purchasing them, then there would be reason to demand that the price of Crown Lands should be reduced; but so long as the present system is followed, which permits the occupation of Crown Lands on easy terms, the demand for a reduction in the price of them cannot in my opinion be supported; at any rate, it cannot be supported on the principle, advanced by the Committee, 'that the Waste Lands of the territory cannot be considered a source of profit to the Community, until they fall into the occupation of private individuals,' for it is notorious that, by means of the system of authorized squatting, the waste Lands of the territory are a source of great profit to the Community.

It is undoubtedly very much to be desired that the Colonists, and even the Squatters, should possess a fixed interest in some portion of the Lands they occupy, for otherwise they will have no inducement to improve them; but it is, in my opinion, by no means desirable for them to become the proprietors of extensive tracts of Land, which they have no means whatever of improving.

A high Minimum price acts as an inhibition on the Sale of Land, which is not worth improving; and Lands, which are destined for ages to remain in an unimproved state, are in my opinion better in the hands of Government than of private individuals. I am not at all prepared to admit that a tract of unimproved Country, say any tract of 10,000 or 20,000 acres of unimproved Land, yields at the present moment more profit to the community in the hands of an individual than the same tract of Land would in the hands of the Government; I rather believe the contrary to be the fact. The chief cause of the prosperity of New South Wales is perhaps that a profit can be derived from land even in its unimproved state, and without the outlay on it of any Capital. Instead of complaining that three acres of unimproved land are required to feed a Sheep, we ought to be thankful that, from nearly every acre of land, a pound of Wool can be annually produced, without the necessity of improving it. I doubt whether any article, equal in value to a pound of Wool, can be derived with equal facility from an acre of unimproved land in the thickly wooded parts of America. The Wool of New South Wales may, under this point of view, be compared to the Timber of Canada, each being the produce of unimproved land; but Timber is only available in the neighbourhood of Navigable Rivers, whilst Wool will, in Australia, bear a land carriage of 300 Miles. It is the superior productiveness of unimproved Land, which will long continue to form the chief attraction which Australia presents to Emi-

grants from Europe, an attraction greater, I believe, than any which Canada, even with Land at 1s. 6d. per acre, can offer.

The Squatting System has its evils no doubt; and I shall take an early opportunity of bringing the most prominent of them under Your Lordship's notice; but one (and a very great) advantage of it is that it enables and, so long as it be persevered in, will enable the Government to uphold a high upset price of Land (without injury to the Community), and thereby to prevent the premature alienation from the Crown of vast tracts of Land, as yet only valuable for its pasturage. The high price of land and the Squatting System seem to me naturally to go together, the one supports the other, and either would be indefensible without the other. Together they form (as far as I can judge) the best system on which the Domain of the Crown can, under existing circumstances, be administered; Sheep increase with great rapidity, and consequently new lands are occupied to a vast extent every year. If it be once admitted that the price of the Fee simple of these Lands is to be fixed with reference only to the profit which they yield to the owners of the Sheep, the price must, and especially as we recede from the Sea coast, rapidly decline, until it become less per acre than the smallest Coin in use in the Country.

The increase in the upset price of Land has, it may be admitted, been one of the causes of the diminished productiveness of the Land Fund during the last two years; but it is far from having been the sole cause of it. So long as the Mania for speculating in Land lasted, Land was purchased without much reference to the price placed upon it by the Government. The Mania has happily passed away, and but little Land would now be sold, even were the upset price reduced to what it was in 1837, 5s. per acre. If the raising of the upset price of Land tended in any degree to abate the Mania, then it must be considered to have conferred a most important benefit on the Colony.

It is argued by many that a high upset price is unnecessary, because Land will always fetch its value, let the upset price be what it may. But even the Surveyor General of New South Wales admits that this can only be the case when the supply is regulated by the demand, not when large quantities of land are forced into the market; and the bringing of Land into the market in proper quantities is a matter so intimately connected with the question of an upset price, that I trust I may be allowed to refer to what I stated on this head to the Council on the 9th Sept., 1842; 'It is well known to you all, gentlemen, that I have never myself advocated a very high Minimum price. What I have always laboured to establish is, that the distinction should be well preserved between the Minimum price and the upset price. I think the Government should abstain from bringing large quantities of Land into the Market; and that the upset price of all land should be regulated by what was the last selling

price of land in the same locality, or of equal value; and, if this principle were steadily acted upon, it would be of little importance what the Minimum might be. A Minimum price, however, has the effect of relieving the Government from the inconvenient pressure which would without it be felt, so long as the present erroneous views respecting the sale of land prevail in the Colony. Public opinion is in favor of a low price; the Officers of the Government, as Members of the Public, and partaking of the feelings of the Public, are in favor of a low price; and, under such circumstances, I esteem it fortunate that the Parliament of Great Britain is about to take out of my hands a discretionary power, which I cannot exercise in a manner to satisfy my own conscience, or in the way which I verily believe most advantageous to the Public, without placing myself in opposition to the wishes of the Colonists, and being obliged constantly to overrule the opinions of those Officers, upon whose assistance and cordial co-operation I must mainly rely in carrying on the business of Government. I have no doubt that the increase in the Minimum price will ultimately be found beneficial.'

I will advert to only one other of the arguments, which are advanced in favor of a reduction in the Minimum price of Land.

It is said that the high Minimum price deters people of capital from now coming to this Colony. I fear there are far more powerful causes at present in operation to deter people of Capital from coming to New South Wales; and that our frightful Insolvent List has more to do with it than the refusal of Government to sell bad Land, whilst there is in the Market an immense quantity of the same article, the property of Individuals, unsaleable at almost any price. Nevertheless, when vast numbers of persons agree in any opinion (however erroneous), the mere concurrence of opinion will (for a time at least) produce an effect nearly as great as if the opinion were well founded; and I consequently am not prepared to deny that the opinion, so generally expressed, that the Colony has been, or is about to be ruined by the rise in the Minimum price of Land, may deter some people from adopting it as their home.

As I shall have occasion in another Despatch to address your Lordship on the subject of the Administration of the Wild Lands of the Colony, particularly of those beyond the Boundaries of Location, I will now pass to the consideration of that part of the Report of the Committee, which relates to Emigration.

The Committee roundly and unhesitatingly condemn everything which has been done during the last ten years; and denounce, as a *fatal error*, the appropriation of the Revenue derived from the sale of Land to the purposes of Immigration. It was forgotten, says the Report, that Capital and Labour, as elements of Colonization, should exist in a new Country in proportion to each other; and it was a fatal mistake to send the one out of the Country to bring the other in.

With all possible respect for the gentlemen who composed the Committee, I must maintain that no such forgetfulness is chargeable on the Government, and that no such mistake was committed; the chief cause of all the evil that occurred was not the sending of Capital out of the Colony, but the too rapid flow of Capital into it.

Capital was not sent out of this Colony to bring Emigrants in; the only Capital sent out of it during the last ten years has been exported in the shape of Wool, Oil, or Commodities of a similar nature, which it was desirable to export; which if retained in the Colony could not have enriched it; and there is now, after three years of reaction, a greater quantity of Capital of every kind in the Colony, in proportion to its population, than there was ten years ago. The Committee do not apparently distinguish between Capital and Credit. The real mischief is not that the Colony has got too little Capital, but that it has had too much Credit, not that it has exported too much Capital, but that it has imported too much *on Credit*; that Individuals (not the Government) have become deeply indebted during the course of the last eight or ten years to parties for the most part resident in England. The evil is that individuals were found in New South Wales weak enough to accept Loans offered to them at a higher rate of Interest than they could afford to pay. The proceeds of these Loans were applied in part by the borrowers to the purchase of Lands from the Crown; and, after they had thus passed into the hands of the Crown, were by the Crown applied to the introduction of Emigrants. That the Land Mania was an evil may be allowed, but an evil which the Government had neither the power to raise nor to stop; it arose partly out of the unwise vauntings, which were made of the Colony, by individuals in England, and especially before the Transportation Committee of 1837, but was more immediately caused by the eagerness with which Capital was sent here for investment by Companies, as well as private individuals; but the Mania, whilst productive of many evils, has at least had the good effect of adding 50,000 souls to our population, and of changing, in the almost incredibly short space of six years, the whole character of the Colony, of converting it in fact from a Convict Colony to a free one. Had there been no mania, the Government could only have got these 50,000 souls by incurring a debt of perhaps £500,000; but by aid of the Mania, and the intervention of Banks and Loan Companies, the Government has got them in exchange for Land. A debt indeed has been incurred; but it is a debt, or rather a collection of debts, owing by one set of individuals to another set of individuals, instead of a debt owing by the Colony collectively or in other words by the Government. Had a measure been adopted, which was brought forward in the late Session of the Legislative Council for the purpose, as was stated, of 'bringing to the aid of individuals the Credit of the Colony,' the effect of it would

probably have been to reverse the present state of things, and to transfer to the public in general, the debts now owing by individuals.

Though, therefore, it is in my opinion incorrect to say that Capital has been sent out of the Colony in order to bring Emigrants into it, it would be quite correct to say that the money, now owing by individuals in New South Wales to individuals or companies in England, has in great part been expended in bringing Emigrants into the Country; the ultimate effect is indeed the same, or nearly the same, as if the borrowers had received, not money but Immigrants from the Lenders; The Government has only acted as an Agent between the parties, Land being the medium through which it conducted its agency; but Land has fallen in value, and consequently the parties, who received it from the Government, or rather those who now hold it, are losers.

But had no Emigrants been imported, would the Colony have been in a better position than it now is? I confidently answer, No. Had the money received by Government for Land not been spent on Immigration, it must either have been hoarded, or spent in some other way. It is needless, however, to consider what might have been the effect of hoarding it; for the Colony demanded that it should be spent. My Predecessor¹ pursued for a time the hoarding system, but was obliged to relinquish it at the call of the Public.

But it is now said by some that the money, produced by the sale of Land, should have been spent on improvements, and Emigrants brought to the Colony by means of money borrowed in England. To this I can only answer that, if in 1839 or 1840, when the Government had very large sums of money in the Sydney Banks, it had been proposed not to spend that money, but to raise a Loan in England for the purposes of Immigration, the Party proposing it would have been laughed at.

It is not necessary for my own defence, or the defence of this Government, that I take up this argument; for it would be quite sufficient for me to say that, in spending the Money on Immigration, I obeyed not only the Mandate of Her Majesty's Government, but also the call of the People of the Colony; for there certainly never was in any Colony so direct an agreement between the public voice and the voice of the Government, both Local and Imperial, as that which existed in New South Wales from 1838 to 1842, in respect to the expenditure on Immigration of the funds derived from the sale of Land.

It is not without the greatest surprise that I see the propriety of the proceeding now called in question; and I cannot help recording my solemn repudiation of the new doctrine.

¹ Sir R. Bourke.

MEMORIAL OF STOCKHOLDERS OF NEW SOUTH WALES
TO LORD STANLEY (January 1846) [EXTRACT]¹

(*P.P.*, 1846, xxix.)

The Bill, which has been brought into Parliament by your Lordship, to regulate the occupation of Crown Lands beyond the boundaries, may be divided into two great portions, viz., the clauses which relate to the conveyance of runs by lease, and those which refer to granting them by license. We will take the liberty of analysing these separately. And first as to the clauses referring to lease—they declare that leases may be purchased by auction—that when not put up to auction they may be limited to a privileged class—that their term is to be a period of seven years, and that the granting or withholding of them is to be at the option of the local Government.

For the adoption of the principle of a lease we have to express to your Lordship our grateful thanks. It is a most important boon to the pastoral population, and involves perhaps the only mode of tenure by which the squatting runs can be made profitable; but we take the liberty of stating that the clauses of the Bill as they now stand would defeat the benefits which it is the evident intention of your Lordship to bestow.

The principal of setting up leases by auction would, we submit, expose to a great degree of injustice the individual who first took up the run. To form a station requires great knowledge, energy and expenditure. The very discovery of a spot eligible for a stock establishment demands the labour of weeks, and not unfrequently of months, during which the intending settler must wander through unknown regions, in hourly danger from the savages on his track, and with no other covering but the sky. The climate, the probable distance from navigation, the openness or denseness of the forest, the permanence of the water, the character of the soil, the grass and the substratum of rock on which it grows, are all matters of anxious investigation. When the site has been selected, it is frequently necessary, from the large tracts of bad land in New South Wales, to go 50 or 100 miles beyond the nearest white man. Buildings and roads are required; the carriage of stores occasionally costs three times the

¹ In 1845 a Bill was introduced into the House of Commons by Mr. Hope, Lord Stanley's Under-Secretary, providing for the issue to the squatters of leases for not more than seven years—the detailed provisions are indicated in this memorial—but it advanced no farther than the first reading and was sent out to New South Wales for the comments of Sir George Gipps and of the squatters themselves. This memorial is one among many statements of the squatters' case. In deference to their representations and to the opinions of Sir G. Gipps, several modifications were made in the original proposals, and the ultimate results were the Act 9 & 10 Vict., cap. 104, and the Orders in Council issued in pursuance of that Act, of which the most important is given below (No. 15).

amount which was paid as their original price in the capital. Flocks are driven off by the savages; and the shepherds, who are from time to time murdered, require from 50 to 80 per cent. higher wages than are paid on old and safe localities. To induce a man to face such difficulties one thing is necessary—the hope of future gain; but if the Government enforce its claim to the run by putting it up by auction, it will destroy such hope, and with it the spirit of enterprise and concomitant settlement of this vast continent, which are dependent on it. We cannot too much impress upon your Lordship the fact that human beings will labour only for themselves, and that if the Government seize upon the products of their industry they will assuredly paralyse it. Nor would the principle, while so destructive to the individual, be more beneficial to the community. Letting leases by auction is, in fact, selling the Crown Lands under another name, and, as in all land sales in New South Wales upon a great scale, would give an undue stimulus to speculation, and produce scenes of ruin similar to those consequent upon the land sales of 1840, and from which the colony is but now slowly recovering. The struggle for the possession of the new territories would be between a class called land sharks—the English banks, which are now investing in sheep—and one or two wealthy individuals; the only party which would have no share in the contest would be the industrious classes who first formed the stations, or now possess them. The squatters are almost to a man in want of ready money, are notoriously in the hands of their agents, and cannot compete with the Sydney capitalist; and as, in a limited community like this, the value of particular stations is as well known as that of houses in Regent-street or Cheapside, the whole of the most productive runs would pass into the hands of the speculators. The evil would not end here. Let the system of auction be once adopted, and a powerful Joint Stock Company (the idea has been already mooted in England) will become the masters of this colony, and monopolise not only its territory, but its wealth. For the purchasers of the land are in fact also the purchasers of the stock which feed on it, as they only can retain the animals who have pasture to support them. Nor would it avail the unhappy squatter that there are boundless tracts still unoccupied, as no rational being would a second time incur the expense, privation and danger of forming a new establishment, after having ascertained by experience that the only result of reclaiming a wilderness and making it valuable was its being seized by the Crown, and appropriated to its benefit through the medium of an auction. There is still another and a higher point of view in which the question deserves to be considered, its effect upon morality. When the squatter has spent the best years of his life in struggling in the bush, and has seen by slow degrees a home rise under his hands, he insensibly acquires an affection for it; and were the station sold, the price, be the money what it may, would

not compensate him for the loss of his associations. The feeling is an honest one, and worthy of being cherished by your Lordship and the Government, for it is an indisputable fact, that a population is virtuous in proportion to its being attached to a spot. Make it vagabond, and you make it immoral.

In the second principle, that a lease should be granted to parties who had held it for five years consecutively, the intention of your Lordship is evidently kind, as we take the liberty to suppose, that such a privilege was given to those who had been settled for a certain period as a species of compensation for their expenditure. But although the greater number of the stations in New South Wales have been formed for more than five years, and are largely improved, yet, from circumstances, there are few stockholders who, if the Act were construed literally, would profit by it. Squatting runs, however they may be viewed by the Government at home, have been for some years considered in this country as a species of *quasi* property, have been held as such by courts of law, and have passed from hand to hand by sales, which if not sanctioned by the authorities, have been at least connived at. In such purchases the price paid has varied chiefly in proportion to the value of the improvements made on them, and the purchaser thus stepping into the shoes of the original occupant, and incurring like him outlay for the possession of certain buildings, has the same claim upon your Lordship's indulgence. But supposing that the boon were limited to the actual first former of the station, those who have been only recently in possession have if possible a stronger title to your favourable consideration than their more anciently settled brethren, as it is during the commencement of a squattage that the greater part of the most expensive erections, such as huts, wool-sheds and paddocks, are created, while from the very short period of his residence their proprietor has had less opportunity of profiting by them. Thus, from the changes which the misfortunes of the last few years have produced, your Lordship's proposition, well-intentioned as it is, would benefit but few, while the creation of a privileged class, and that a limited one, would excite much jealous feeling.

Of the term of the lease, we would remark that it is too short. Even in England or in Scotland, where leases are best understood, on ground where houses, yards and offices, are ready for occupancy, and the furniture of a rural establishment may be purchased in a day, such a period would be considered too limited for the benefit of the tenant; but in New South Wales, where every thing is to be created, and where the squatter finds nothing on the run conceded to him by the Government but the grass, the water and the gum-tree—where buildings and fences must be raised, and wool-presses and machinery of recent invention imported from England, the lease would expire before the means of making it available were well com-

pleted. It is from the absence of some such lengthened tenure that a great part of this colony is at present useless. It is not uncommon to find tracts of land, 50 or 60 miles square, covered with the finest herbage, but unoccupied from the want of water, as no one under the present system will incur the expense of digging wells or damming gullies, for the purpose of making reservoirs. Even in the settled districts, during drought, such^a result occasionally occurs. In 1839 and 1840 almost every river to the westward was dried up; and Liverpool Plains,¹ at one time the most favoured squatting locality, nearly deserted. In the course of 70 miles, from Pages River to the Peel,² there was only one permanent water-hole; and an immense country, which but three years before had been crowded with stock, was left, and we speak literally, without sheep or cattle. We feel a delicacy in alluding to your Lordship's private affairs, but, if we have not been misinformed, we understand that your Lordship's tenantry enjoy the possession of long leases. The system which, upon mature deliberation, has been found necessary to their prosperity, is still more so to ours. With them the limited character of the tenure injures merely the occupant of the soil. With us it does more, for it not only hampers those who may chance to have a temporary possession, but it paralyses the advancement of the colony by forming an insurmountable obstacle to the immigration of a married population of the middle class. Families are little locomotive, and it is only where there is the certainty of a permanent residence, and a settled, if not brilliant future, that they will resort for the purpose of seeking a home.

A clause of the Bill still remains for consideration, and we approach it with regret.* It is that which makes the granting of these leases not a matter of necessity or positive law, but one which may or may not be adopted at the option of the local Executive. Every Colonial Government, when far removed from the supervision of its chief, whatever its apparent responsibility, must be, and has been in fact, a despotism, unless when subjected to local control. Like other viceroynalties of the British Crown, the Executive of New South Wales enjoyed this absolute authority, and, as might have been expected, used it absolutely. We endeavoured to check its encroachments, but without effect; for the immense civil list conceded to it by the Home Government, amounting, with the revenue of the Crown Lands, to £150,000 a year, made it independent of our representatives, and men complain in vain when they have no power beyond that of complaint. It was to obtain relief from this system of irresponsibility, and the despotism consequent on it, that we first

¹ The Liverpool Plains, in the north-east of New South Wales, were reached by the advancing squatters in the late twenties and early thirties.

² The Peel is a tributary of the Darling flowing through the Liverpool Plains. In its lower reaches it is known as the Namoi. The Pages (unless it is quite a small stream) must since have been renamed.

appealed to your Lordship. The reports which were transmitted to you by the Legislative Council¹ were distinguished by their truthfulness and eloquent exposition of our grievances, and had been adopted in New South Wales with the zealous approbation of an immense majority of all classes—of our elective legislature, our magistrates, and of almost every man of wealth and judgment in the colony. To so unanimous an expression of public opinion, with eager and anxious expectation we awaited the reply. We have received it at length, in that clause of the Bill which is now the subject of our comment; and we cannot disguise from your Lordship, that the decision which is contained in it—a decision by which you have not only given the sanction of your high office to the past, but have conveyed to that Executive of which we complained an absolute power over our fortunes and happiness for the future—has excited in the minds of the colonists an almost universal feeling of bitterness and sorrow. Could we be fortunate enough to induce your Lordship to believe that communities, like individuals, understand best the management of their own affairs—that in all matters which do not affect the empire, but are strictly proper to the colony, we better than any other know our wants, feel most sensitively our grievances, and are most quick-sighted as to the surest and readiest mode of relieving them; could we persuade you to give us a Legislative Council, representing not merely a limited number of landholders and townspeople, but every one who has an important stake in the colony,—above all, could we obtain from you a Government which should be made responsible to the people who support it, and for whom it was created, we do assure you, and with confidence, that we should be a community wealthier and happier, and more contented; for the change of sentiment which has taken place in the pastoral districts of New South Wales with regard to the mother country, within the last few years, is matter of painful notoriety.

¹ An extract from one of these reports is printed above as No. 21 of Section I.

ORDER IN COUNCIL ON SQUATTING IN NEW SOUTH WALES [EXTRACTS]¹

(*Historical Records of Australia, Series I, vol. xxv.*)

ORDER-IN-COUNCIL

At the Court at Osborne House, Isle of Wight, the
9th day of March, 1847.

PRESENT:—The Queen's Most Excellent Majesty, His Royal Highness Prince Albert, Lord President, Lord Privy Seal, Lord Chamberlain, Earl of Auckland, Viscount Palmerston, Bishop of London, Lord Campbell.

Whereas by an Act passed in the present year of Her Majesty, intituled, '*An Act to amend an Act for regulating the sale of Waste Land belonging to the Crown in the Australian Colonies, and to make further provision for the management thereof*,' after reciting that it might be expedient that various rules and regulations should be made, respecting the more effectually making demises or licenses for any term of years not exceeding fourteen, of any such waste lands as therein mentioned, and respecting the reservation on such demises or licenses, of any such rents or other pecuniary services, and respecting the insertion therein of such conditions and clauses of forfeiture as are therein mentioned, and respecting the division of the said Colonies into districts within which alone such demises or licenses might be made to take effect, and respecting the renewal of any such demises or licenses, and respecting the conflicting claims of different persons to obtain any such demise or license, and respecting any right of pre-emption which it might be proper to give to the holders of any such demise or license, and respecting the forfeiture of any such demises or licenses, on the conviction of any holders thereof, of certain offences in any such Colony, and respecting any other matters and things which might be requisite, either for carrying into more complete effect the occupation in manner therein mentioned, of such waste lands as aforesaid, or for preventing the abuses incident thereto; it was enacted, That it should be lawful for Her Majesty, by any Order in Council, to make and establish all such rules and

¹ Sometimes, as in this case, Orders in Council are made by the authority of Acts of Parliament, sometimes by virtue of the royal prerogative. The proposed Order in Council of Section V, No. 1 (below), belonged to the latter class, referring as it did to conquered colonies. In so far as legislation by Orders in Council of either kind applies to England, the accepted principle now is that it must not seriously alter the law of the land. In the Act 9 & 10 Vict., cap. 104, below referred to, as in the case of many other Acts, Parliament acted on the principle that the details were essentially matters for the experts of the Executive Departments, its own duty being merely to prescribe limits within which their discretion might be exercised.

regulations as to Her Majesty should seem meet for the purposes aforesaid, or for any of them, and any such rules and regulations again to repeal, renew, alter and amend; and that all such Orders in Council should have the force and effect of law in the Colonies aforesaid:

And whereas it is expedient that the rules and regulations hereinafter contained, should now be made and established, for regulating the occupation of the waste lands of the Crown in the Colony of New South Wales, it is hereby Ordered by the Queen's most Excellent Majesty, by and with the advice of the Privy Council, that within the said Colony of New South Wales, the rules and regulations comprised in the following chapters, shall henceforth be observed, and have the force and effect of law.

CHAPTER I

As to the Division of the Lands in New South Wales.

Sect. 1.—The lands in the Colony of New South Wales shall, for the purposes of the present Order, be considered as divided into three classes and be dealt with accordingly, as they may be situated in Districts to be denominated respectively as the settled, the intermediate, and the unsettled districts. . . .

CHAPTER II

Rules to be Enforced within the Unsettled Districts.

Sect. 1.—It shall be lawful for the Governor for the time being of the said Colony, or the officer for the time being administering the Government of the Colony, and he is hereby empowered to grant leases of runs of land within the unsettled districts, to such person or persons as he shall think fit, for any term or terms of years, not exceeding fourteen years in duration, for pastoral purposes, with permission, nevertheless, for the lessee to cultivate so much of the lands respectively comprised in the said runs as may be necessary to provide such grain, hay, vegetables, or fruit for the use and supply of the family and establishment of such lessee, but not for the purpose of sale or barter; and so, nevertheless, that such leases shall in no case prejudice, interrupt, or interfere with the right of the Governor or other officer for the time being administering the Government of the said Colony to enter upon any of the lands comprised in the said leases for any purpose of public defence, safety, improvement, convenience, utility, or enjoyment, agreeably to the provisions for those purposes contained in the 9th section of the second chapter of this Order in Council, or otherwise.

Sect. 2.—The rent to be paid for each several run of land shall be proportioned to the number of sheep or equivalent number of

cattle which the run shall be estimated as capable of carrying, according to a scale to be established for the purpose, by authority of the Governor. Each run shall be capable of carrying, at least, four thousand sheep, or equivalent number of cattle, according to the scale aforesaid, and not in any case be let at a lower rent than ten pounds per annum, to which two pounds ten shillings per annum shall be added for every additional thousand sheep or equivalent number of cattle which the run shall be estimated as capable of carrying.

Sect. 3.—In order to estimate the number of sheep or cattle which each run will carry, before the granting of the said lease as hereinbefore mentioned, the intended lessee or occupier shall name a valuer, and the Commissioner of Crown Lands shall either act as valuer, or name one to act for him; and these two valuers shall have power to choose, if necessary, an umpire; but if they cannot agree in the choice of an umpire, he shall be appointed by the Governor, or the officer for the time being administering the Government of the said Colony.

Sect. 4.—The rents to be paid according to the scale above mentioned, are to be reserved exclusively of any existing assessments of taxes or rates on sheep and cattle, and are to be paid without abatement on account of the existing or any future assessments of taxes or rates on sheep and cattle, and in no way to interfere with the right of the Colonial Legislature to impose from time to time such assessments as may be deemed advisable.

Sect. 5.—The rent for each run shall be payable yearly in advance, at such time and place as shall be respectively specified in the lease of the said run of land. In the event of default being made in payment of the rent, the lease shall be forfeited, but the lessee shall be permitted to defeat the forfeiture, and prevent its becoming absolute and indefeasible, by payment within sixty days from the date of the original rent day, of the full annual rent, with the addition of a sum equal to one equal fourth part of the yearly rent so due from him, by way of penalty; but unless the whole of the said yearly rent, with such penalty as aforesaid, shall be duly paid within the term of sixty days, counting from the original rent day inclusive, the lease shall be absolutely and indefeasibly forfeited. And it shall be competent to any individual to demand of the Governor, or of the Officer for the time being administering the Government of the Colony, or of any Officer or Officers acting by his authority for the present purpose, that a fresh lease of the run so forfeited be offered to sale, under the general rule hereinafter provided for that purpose in section 12 of this chapter.

Sect. 6.—During the continuance of any lease of lands occupied as a run, the same shall not be open to purchase by any other person or persons except the lessee thereof. But it shall be lawful for the

Governor, or the Officer for the time being administering the Government of the said Colony, to sell to such lessee any of the lands comprised in the lease granted to such lessee, provided that the quantity of the lands sold to such lessee shall not be less than one hundred and sixty acres, and that the price to be paid for the same shall not be below the general minimum price of one pound for each acre: Provided also that, if the portion or lot of any such run sold to such lessee be less in extent than three hundred and twenty acres, the expenses of the survey of the portion so sold shall be paid by the purchaser.

Sect. 7.—Every lot to be sold under the provisions before mentioned shall be subject to the following conditions:—

First—Each lot must be rectangular, unless the features of the country, or the course of any river or stream, render a deviation from the rectangular form necessary; and in every case, two sides at least of the lot must be directed to the cardinal points of the compass.

Second—The two opposite sides of any stream or watercourse which, according to the practice of the department of the Surveyor General, ought to form a boundary between different sections or lots, shall in no case be included in the same lot.

Third—No single lot shall have more than four hundred and forty yards of water frontage for one hundred and sixty acres, or more than a like proportion of water frontage for any quantity greater than one hundred and sixty acres, but the water frontage shall be reckoned according to the distance from one extreme point thereof to the other in a right line, and not according to the bendings of the watercourse or river; and the Governor, or Officer for the time being administering the Government of the said Colony, shall have the right of refusing to sell any lot or lots, in every case where it may appear to him that the sale of such lot or lots respectively, might give an undue command over water required for the beneficial occupation and cultivation of the lands adjoining either side of any stream or watercourse.

Sect. 8.—It shall be lawful for the Governor, or Officer for the time being administering the Government of the said Colony, to except, out of any such sale or sales as aforesaid, all such lands as it may appear to him expedient to reserve for any of the public uses for which it is enacted by the third clause of the Act passed in the fifth and sixth years of Her Majesty, chapter 36, intituled '*An Act for regulating the sale of waste lands belonging to the Crown in the Australian Colonies*,' that lands required for public uses may be excepted from sales authorised by that Act, and if there be reason to suppose that any of the lands applied for under the regulations hereby expressed possess peculiar advantages, whether of water frontage or otherwise, which would render it fit that a higher price should be paid for such lands, the Governor or the Officer for the time being administering the Government of the said Colony, or any

Officer authorised by him for the purpose, may require the said lands to be assessed by valuers appointed, in manner provided in section 3 of the second chapter of this Order in Council, in order that the value, if estimated by them or their umpire at more than one pound per acre, the higher amount may be paid for such lands accordingly.

Sect. 9.—That nothing in these regulations, or in any lease to be granted under the powers heréby vested in the Governor, shall prevent the said Governor, or Officer for the time being administering the Government of the said Colony, from making grants or sales of any lands within the limits of the run or lands comprised in such lease for public purposes, or disposing of in such other manner as for the public interest may seem best, such lands as may be required for the sites of churches, schools, or parsonages, or for the construction of high roads or railways and railway stations, or other internal communications, whether by land or water, or for the use or benefit of the aboriginal inhabitants of the country, or for public buildings, or as places for the interment of the dead, or places for the recreation and amusement of the inhabitants of any town or village, or as the sites of public quays, or landing places on the sea coast or shores of navigable streams, or for the purpose of sinking shafts and digging for coals, iron, copper, lead, or other minerals, and effectually working coal, or iron, or copper, lead, or other minerals, or for any other purpose of public defence, safety, utility, convenience, or enjoyment, or for otherwise facilitating the improvement and settlement of the Colony; but so that the quantity of land which may be granted or sold to any railway company shall not exceed in all the rate of one hundred acres for every mile thereof in length.

Sect. 10.—That if at any future period a railroad be made through or near to the districts comprising unsettled lands, all lands within the distance of two miles from that railroad shall, notwithstanding any lease of the run within which such lands shall be situated, be liable to be sold at the end of each successive year from the date of the said lease; provided that at least sixty days' previous notice shall have been given to the lessee, and so that such lessee shall be entitled to all the same conditions reserving to the previous lessee the right of pre-emption and the value of improvements as are hereinafter mentioned, with reference to the case of a sale at the expiration of the full term of such lease.

Sect. 11.—All occupants of Crown Lands, who shall have been in licensed occupation of the same for at least one year at the time when this Order in Council shall come into effect, are to be entitled to demand leases of their respective runs under the present regulations, within six months from the date of the publication of this Order in Council by the Governor or other officer administering the Government of the said Colony, but not afterwards; and all occupants, who have been in licensed occupation of their lands for a shorter

period than the term of one year, shall be entitled upon the expiration of the same term of one year, without having forfeited their respective licenses, to demand leases of their respective runs, under the regulations herein contained; provided such lease shall be lawfully demanded within six months after the expiration of the said term of one year, but not afterwards.

Sect. 12.—When any run of lands, after being occupied, shall be forfeited, or become vacant without the previous occupant's having exercised his right of renewal hereinafter reserved, it shall be competent for any person, desirous of acquiring a lease of such run of lands, to give notice to the Governor, or Officer for the time being administering the Government of the said Colony, of his, her, or their desire to purchase anew the lease of such run of lands, and immediately after such notice the Governor or Officer administering the Government of the said Colony shall direct sealed tenders to be sent in at such time and place, and in such form as he shall think fit, by the person giving such notice as aforesaid; and also by such other person (if any) as may be disposed to enter into competition for the said lease; and every tender so to be made shall state the term of years for which it is proposed to take the said run, and whether, in addition to the minimum rents required agreeably to the provisions contained in sections 2 and 3 of the second chapter of this Order in Council, it is proposed to offer any, and if any, what amount of premium for the lease; and the said tender or tenders shall be opened in the presence of two or more persons authorised by the Governor or Officer for the time being administering the Government of the said Colony for that purpose, and if there shall be more than one tender, the tenders shall be opened at the same time, and if there shall be only one tender the lease of the run shall be given to the person making such tender, provided the rent offered shall be admissible under the provisions contained in sections 2 and 3 of this chapter of the Order in Council; but if there shall be more competitors than one, the lease of the run shall be given to such person or persons as shall tender the highest amount of premium for the same; but if two or more tenders shall be made for the same run and no one of them be higher than all the rest, a future day shall be announced by the persons who open the tenders, on which day it shall again be competent to all persons to offer fresh tenders in the same manner as hereinbefore provided in regard to the first tenders.

Sect. 13.—If any individual be desirous to acquire a new run of land which has never been occupied before, he shall be at liberty to send in a sealed tender, at such time and place, and in such form, as may be appointed by the Governor or Officer administering the Government of the said Colony for receiving tenders for new runs, and shall set forth in his tender a clear description of the run for which he applies and of the boundaries of the same, and shall state

whether, beyond the amount of rent to be ascertained as hereinbefore provided, he is willing to offer any, and if any, what amount of premium for the lease, and such tenders shall be in all respects dealt with as hereinbefore provided in section twelve of this Order in Council for tenders for runs, which have been forfeited or fallen vacant, save and except that, if it shall occur that two or more persons have thus applied for different runs, of which part of one run would include part or the whole of another run, the Governor or Officer for the time being administering the Government of the said Colony, or the person or persons authorised by him to act in this behalf, shall declare what shall be the several runs, for which it shall be competent to parties to tender, and another day shall then be named, at which the previous applicants, and all other persons shall be at liberty to offer fresh tenders for the runs so delivered.

Sect. 14.—A lease shall be liable to forfeiture in three modes:—

First—It shall be forfeited for non-payment of rent as provided in section 5 of the 2nd chapter of this Order in Council.

Second—It shall be forfeited absolutely, immediately upon any conviction for felony against the lessee; and

Third—In the event of his conviction by a Justice of the District for any offence against the law, the case may be enquired into within three months after the conviction by two or more Justices, who, if they think fit, may adjudge the lease to be forfeited with or without compensation for the value of the improvements, according to the nature of the offence: Provided always, that no such adjudication of forfeiture pronounced by the Justices shall take effect until confirmed by the Governor or Officer administering the Government of the said Colony.

Sect. 15.—Upon the expiration of a lease, it shall be competent for the Governor or Officer administering the Government of the said Colony, to put up all or any part of the lands included in a run for sale, subject to the following conditions:—

First—The previous lessee shall have the option of purchasing the land for its fair value in an unimproved state, which shall never be estimated at less than £1 per acre.

Second—If declined by the previous lessee, the value of any improvements on the land offered for sale shall be ascertained by valuers appointed under the provisions contained in section 3 of the second chapter of this Order in Council: Provided nevertheless, that the sum, so to be estimated and allowed for, is in no case to exceed the amount of the actual outlay made by the lessee.

Third—The upset price shall then consist of the joint value of the land and the improvements, and, if the land be sold, the amount of the improvements shall be paid over to the previous lessee, and only the balance be retained by the Government.

Sect. 16.—If no part of the run be sold, the previous lessee shall

be entitled to a renewal of the lease of the whole, or, if any part of the run, not amounting in all to one equal fourth thereof, be sold, such lessee shall be entitled to a renewal of the lease for the remaining parts of the lands comprised in his run, subject to the reservation of an increased rent described in the next hereinafter following section of these rules and regulations; and provided, nevertheless, that the boundaries of the different classes of land in the Colony shall not in the mean while have been so far extended as to bring the said run within the class of settled lands; and provided also that, if brought within the class of intermediate lands, the lessee shall only obtain a renewed lease of the said run under the rules hereinafter laid down as applicable to that class of lands.

Sect. 17.—The rent of every lease of a run of land, after the expiration of the first lease granted under this Order in Council, is to be paid by any new lessee on the number of sheep and cattle which the run shall be estimated to carry in its improved, instead of its unimproved state, in the same manner as provided for in sect. 3 of the second chapter of this Order in Council; but, as an encouragement to improve, the lessee whose lease shall be renewed is to be exempt from paying any increase beyond fifty per cent. upon the amount of rent reserved under the expired lease.

CHAPTER III

Rules Applicable to Intermediate Lands.

Sect. 1.—Within lands coming under the description of intermediate lands the interest in runs shall be acquired, held, and determined upon the same terms and conditions as above laid down for unsettled lands, excepting that the leases shall not be made for more than eight years in duration, and that, at the end of each successive year from the date of the lease, it shall be competent for the Governor or Officer for the time being administering the Government of the said Colony, provided he shall have given sixty days' previous notice, to offer for sale all or any part of the lands within any such run, subject to the same conditions in favor of the lessee as are above laid down in case of a sale at the expiration of the full term of a lease of unsettled lands.

CHAPTER IV

Rules Applicable to Settled Lands.

Sect. 1.—Within the boundaries of the settled lands, it shall be competent for the Governor or Officer for the time being administering the Government of the said Colony, to grant leases of lands exclusively for pastoral purposes, for terms not exceeding one year; and it shall further be competent for the Governor or Officer for the time being administering the Government of the said Colony,

if he deem it expedient, to make general rules, under which the holders of purchased lands within such districts of settled lands may be permitted to depasture, free of charge, any adjacent Crown lands: Provided that the depasturage of such unsettled lands free of charge shall in no way interfere with the right of the Government at any time to dispose of the same, either by sale or by lease for one year as above mentioned.

And the Right Honorable Earl Grey, one of Her Majesty's Principal Secretaries of State, shall give the necessary directions herein accordingly.

(signed) WM. L. BATHURST.¹

16

DESPATCH FROM GREY TO ELGIN [EXTRACTS]

(*P. P.*, 1847, xxxix.)

Downing Street
29th January 1847.

MY LORD,

Since I addressed to Your Lordship my Despatch of December 31st I have received information which leads me to anticipate that you will not find it practicable to carry into effect the design of settling in Villages in the manner I have there described bodies of Emigrants proceeding from this Country, and also that the adoption of any such measure (which I never expected to have any extensive operation) will prove to be even less required than I had supposed for the purpose of enabling the greatly increased number of Emigrants that will probably arrive in the British North American Colonies in the ensuing Season to maintain themselves by their own industry. From communications which the Emigration Commissioners have had by my direction with some of the Public Companies possessing land in North America it appears that the experience of those who conduct the affairs of these Companies in the Colonies is so unfavorable to the expectation that Settlements composed of Emigrants of the poorer class recently arrived from Europe can be successfully established in any of the British Provinces, that none of the Companies are prepared to undertake to carry any such design into effect, and all concur in entertaining a very decided Opinion that the only mode by which Emigrant labourers arriving in Canada can advantageously be provided for, is by enabling them to disperse themselves over the Country where a demand can be found for their labour. Under these circumstances as the measure which I had in contemplation depended for its success upon the co-operation of the

¹ The Hon. W. L. Bathurst, second son of the third Earl (see below, p. 377, note 2) and afterwards fifth holder of the title, was clerk to the Privy Council jointly with Charles Greville the diarist.

Owners of Wild land in the North American Provinces, and as it is not to be expected that private Owners will be found to engage in an Undertaking which is considered too hazardous by great Public Companies I fear that for the present at least the design must be abandoned. I confess that it is with extreme reluctance I come to this conclusion, as I continue to be of Opinion that very great advantage would result from enabling Emigrants to proceed from this Country in bands associated together for the purpose of settling in North America under the guidance of Religious teachers if the practical difficulties of doing so could be surmounted. . . .

Upon the whole the information before me leaves upon my mind a decided conviction that all that it is necessary to do in order to provide for the unusually large Emigration which may be expected in the present year is to persevere in the system which has now for some years been acted upon with so much advantage, and to assist the Emigrants by affording them information as to the places where they may hope to find work, furnishing them also, when necessary, with the means of conveyance—In this manner at a comparatively small expence the whole of the Emigrants who have hitherto reached the province have been satisfactorily provided for, and by extending the means employed in proportion to the expected increase in the number of Emigrants, I see no reason whatever to doubt that a similar result may be hoped for in the ensuing Season.—Her Majesty's Government will accordingly submit to Parliament an increased Estimate for this service. I need however scarcely remind Your Lordship that the proposed increase of the vote by no means supersedes the necessity of the same strict caution which has hitherto been observed in extending assistance to emigrants, and in confining that assistance to the cases in which it is really required. . . . It is not proposed by Her Majesty's Government to attempt to give increased activity to the flow of Emigration to North America by undertaking to provide for Emigrants the means of Conveyance either gratuitously or at a lower cost than that at which they can obtain it for themselves, and as I am aware that a contrary expectation has been very generally entertained both in this Country, and in the Colonies, and that emigration at the public cost has been recommended as one of the most effectual means that could be made use of for the relief of the distress of Ireland I think it will be convenient that I should shortly state to Your Lordship some of the grounds upon which the determination come to by Her Majesty's Government is founded.

The first question which naturally arose in considering whether it would be advisable to undertake the conveyance of Emigrants to British North America at the public charge, was as to the extent of the task which could thus have been thrown upon the executive Government. It is obvious that if free passages to Canada were offered to Emigrants it would be not only difficult but impossible to confine the

boon to those who would otherwise be unable to obtain from other sources the means of Emigration. A large proportion of the whole number of Emigrants consists of persons of the laboring Class who raise the money required for their passage with very great difficulty and often by the assistance afforded them by others. Such assistance as I have already observed, is very frequently given by persons who having themselves emigrated in former years remit money which they have earned in America to their friends and relations who are thus enabled to follow them. It is calculated that the remittances thus received and expended in emigration at Liverpool alone amounted last year to no less a sum than £37,000. If passages were provided at the public expence for all who desired to emigrate these remittances and the sacrifices now made by so many persons for the purpose of doing so would cease, and a very large proportion of those who now by some means or other find their own way across the Atlantic would have to be conveyed at the public expence. Even those who now proceed directly to the United States would seek the same ultimate destination by the route of Canada, in order to avail themselves of the gratuitous passage provided for Emigrants to the British Colonies. Hence as the object of the Measure would be that Emigration should proceed much faster than it now does, it is a very low estimate of the charge which would be thrown upon the public to assume that the cost of Conveyance from this Country to America would have to be provided for at least as many persons as now Emigrate at their own Expense. But in the last ten years no less a number than 687,000 persons have so Emigrated; the Emigration of last year alone having been upwards of 110,000. At present the Emigration is conducted at a very cheap rate. The desire to reach America being exceedingly strong, many of the Emigrants are content in order to do so to submit to very great hardships during the Voyage; indeed so powerful is this feeling that were it not for the requirements of the Law thousands of Emigrants would cross the Atlantic in Ships so overcrowded, and insufficiently provisioned, that a fearful amount of disease and death must inevitably occur.—If however this service were undertaken by the Executive Government the sort of accommodation which is now submitted to without a murmur would not be endured, and a very superior and, therefore a much more costly, conveyance would have to be provided. I find that, if undertaken by the public, Conveyance of Emigrants to Quebec could not be calculated to cost less than about £5 for each Adult while little more than half that Sum is more near to the Average charge as now defrayed by the Emigrants themselves. Nor is this all. It is obvious Her Majesty's Government could not convey Emigrants to North America without becoming responsible for their not being destitute when they arrived there. Under the existing system of spontaneous Emigration, emigrants are aware that on their arrival in Canada they have only themselves to trust to,

and that except relief in the Hospital when sick, and conveyance from the Port of Debarkation to places where their Labour may be in demand they have no assistance to look for from the Government. Hence they are led to make every possible exertion to maintain themselves and the result is that a very large number of Emigrants annually find the means of doing so.—But for this purpose very strenuous efforts on their part are necessary, nor is it reasonable to suppose that such efforts would be made by them if they felt that the Government by carrying them to the Colony had incurred a virtual responsibility for their support.

A striking example of the inconvenience hence arising is afforded by the difficulty which at one time was experienced in prevailing upon Emigrants who had been conveyed to New South Wales to leave Sydney (where there was no sufficient demand for their labour) for the purpose of proceeding to the interior of the Colony where Employment might readily have been found. In the same manner it might be expected that no small proportion of those who might be enabled to emigrate to British North America by having free passages provided for them would for the first Winter at all events have to be maintained at the public cost. This would be the more probable, as providing for Emigrants free passages to Canada would, it is to be feared, make a great change in the character of the Emigrants. At present it is in general (with the exception of those sent out by Parishes and Unions) the strong and the enterprizing that emigrate, since these alone will make the efforts necessary for the purpose. But if the means of emigrating were supplied by the public a very different class of Emigrants would make its appearance. The most infirm, or the least industrious, are those whom their neighbours at home would be the most anxious to put forward to emigrate, and of course such Emigrants would be far more likely than those who now go to Canada to become dependent upon charity, and as the burthen could not possibly be thrown upon the Provincial revenue it must fall upon the British Treasury. Looking to all these charges, and to that of the large establishment which would be necessary to carry on so vast a system of emigration, it is not an unreasonable calculation of the expense direct and indirect of an emigration conducted by the State to take it at £10 a head on the whole number of emigrants sent out.—But as it is not unlikely that without any assistance being granted from the public purse near double the number of Emigrants of last year will in the approaching season proceed to North America, and as in the present state of Ireland the offer of free passages would increase that number to the very utmost limit for which accommodation could possibly be provided (of course greatly enhancing the price that would have to be paid for passages) the probability is that a charge of Two Millions or more might be thrown upon the Treasury, and what is worse the system of voluntary Emigration, which is now

working so satisfactorily, and upon so large a scale, would be entirely deranged, and might not again, without great difficulty, be restored.

I have, etc.,

(signed) GREY.

17

REPORT OF COLONIAL LAND AND EMIGRATION COMMISSIONERS (November 20th, 1847) [EXTRACT]¹

(*P. P.*, 1847-8, xlvii.)

In the expectations of efficacy from public measures on this subject, it seems too often to be assumed, as is remarked before, that emigrants to North America must in some way be selected by or fall under the direct power of the Government. Complaints are expressed that so many poor people go, that so many weak people go, that they are not more effectually compelled to observe good order and cleanliness on board—all these remarks assuming some authority on the part of the Government in these matters; but no such authority exists. A large number of ships go to North America for timber and other cargo; a great number of people having the means at their command pay the price for which the masters are willing to give them a passage, and, except in so far as any broad and general rules of protection may be laid down by law, it is difficult to see how the Government could interfere with this practice. No system of passports exists in our country. It would be contrary to all its usages that any of the Queen's subjects having the means of payment in their possession, should be prohibited from passing from one part of Her dominions to another.

And even if the principle were conceded, it is necessary to bear in mind the immense extent of the operations which would have required to be dealt with, and the difficulty of controlling a people flying from starvation. From all parts of Ireland, during the second quarter of this year, nearly 150,000 persons were streaming towards the ports of embarkation, many of them having been for months

¹ All despatches on land and emigration were referred to these Commissioners; and the Secretary of State was accustomed to take decisions in accordance with their advice. They exercised a supervision over all emigration from Great Britain, and saw to the observance of the Passengers Acts; the conduct of assisted emigration to Australia out of the funds derived from land sales was in their hands; and it was also their duty to diffuse information regarding the colonies as fields for emigration. Mr. T. F. Elliot, who was at this time Chairman, was promoted very shortly afterwards. The other members were Sir F. Rogers and Mr. C. A. Wood.

preparing for their expedition, having thrown up any employment or lands which they previously had, and by an arrangement which in the main is very salutary, having already selected their ship, and paid for their passage. At what stage of their progress were these vast multitudes to have been arrested? were they to have been sent back to their homes at which, if they had possessed any means of subsistence before, they must have parted with them in coming away? or, if they were to be detained at the ports for observation, could suitable buildings have been found, apart from the risk of fresh infection, to lodge 40,000 or 50,000 people month after month? and would the public at large have undertaken to support during their detention those people, a large part of whom had expended their last means in providing merely for the journey and the voyage?

We confess that after reflecting on these difficulties, we are led to think, that when it had pleased Providence to afflict Ireland with a famine, and consequent fever, which could not be subdued even on the land, it was little likely that any human contrivance could have averted the same evil from the multitudes who had made their arrangements for a long passage by sea.

18

REPORT OF COMMITTEE OF LEGISLATIVE COUNCIL OF NEW SOUTH WALES [EXTRACTS]

(*P. P.*, 1850, xxxvii.)

THE SELECT COMMITTEE of the Legislative Council appointed on the 12th June 1849, '*to inquire into the management of the waste lands of the Crown, the appropriation of the revenue derived therefrom, and the influence of such management and appropriation upon the colonization of the territory*,' have agreed to the following report:—

I. *The Sale of Land*

It cannot be too often impressed upon the home authorities, that to apply to these pastoral colonies theories and arguments derived from the practice of agricultural colonies is to confound two things perfectly distinct, is as absurd as to attempt to carry on an agricultural farm with the order and method of a Manchester manufactory. It was not for agriculture alone, nor even principally, that the waste lands of the colony have been purchased. They were purchased, as is perfectly notorious here, for the purposes of pasture; and while the Government was content to allow to the purchaser a reasonable right of commonage on the adjacent unalienated land, and to demand a moderate price for the land alienated, the colonization of the country went steadily forward. Possibly the price paid, 5s. per acre,

was even then larger than could be justified by the criterion suggested by the Commissioners, viz., the principal the interest of which would be represented by the profit; but this is always the case with regard to the purchase of land. The feeling which associates the possession of land in the mind of every Englishman with aristocratical birth and political power, the notion of stability belonging to its possession, and the natural wish to possess that with which the eye has long been familiar, have always rendered land a highly prized commodity. The present minimum price, however, has been amply sufficient to overcome all these predisposing causes. As soon as Government exacted the price which could only under special circumstances be paid for agricultural lands, it put an end to the previous system of sale, which had principally applied to pastoral lands. . . .

The fair trader may be so stringently protected as to be ruined by the competition of the smuggler. If land were a commodity like corn, for instance, which the owner has only to refuse to sell in order to deprive all other persons of any benefit from it, the prohibitory price would have vested a lucrative monopoly in the hands of former purchasers, but as Government by refusing to sell cannot prevent the land from being beneficially occupied, the prohibitory price only exposes those who have paid for land to an unfair competition with those who have not.

The Commissioners proceed to argue that the effect of the land mania of 1837 and the following years was first to exhaust the means of those who were disposed to buy, and next to glut the land market with property which the purchasers could neither afford to cultivate nor to hold uncultivated, and which, therefore, they were obliged to sell at any price. These causes, they argue, must have produced a cessation of land sales, and the high price could have no effect, except that of hastening an inevitable result. The Commissioners appear to forget that they are speaking of a mania which for eight years has passed away, that the community which then consisted of 90,000 now numbers at least 235,000, that many of those who lost money by land speculation have since retrieved their affairs by other means, that many persons now possessing large capital in the colony had not arrived at the time when these reverses took place, and that capital has been found in the colony for banking, gas, steampacket, railway, and other companies, and for carrying on almost every other branch of industry with vigour and success. These considerations suffice to show that if land be not purchased, it is not from the exhaustion of our funds, but from the preference of other investments. No doubt land is reduced to a nominal price, but this does not arise from the inability to cultivate that which was never intended to be cultivated at all, but from the policy of the Government which, as explained above, has brought the unsold pasture lands of the interior into competition with the alienated pasture lands of the coast. The

measure of the value of pasture land in New South Wales is not the Government price nor the profit of cultivation, but the terms on which an occupation of it for pastoral purposes can be obtained. The effect of a mere over-speculation in pasture land, which has always been occupied for the purpose for which it was purchased, would long since have passed away, but this effect is rendered permanent by a law which renders the fee simple worthless by making it unattainable. . . .

Until this price is altered it will be vain to expect an immigration of capital to this colony. It is well known that cheap land is the great attraction to emigrant capitalists, and that for a supply of this land they always look to the Government, and not to private proprietors. They trust the good faith and disinterestedness of the one; they are pleased by the boundless selection which it offers, and gratified at being the first to subdue the wilderness to the use of man. By the other they expect to be overreached and defrauded, and they have a natural unwillingness to invest their capital in a place where their predecessor has failed. Thus it is not enough to attract emigrants that land should be cheap, unless that land be in the possession of the Government; and thus this absurd policy has rendered the land which emigrants desire to possess unattainable, at the same time that it has made the land they do not desire ruinously cheap. Such a policy must be doubly injurious to colonization; it withdraws all inducements from intending emigrants, and deters them by its impoverishing effect upon actual colonists.

Your Committee see no reason to object to the details and policy of the Land Sales Act, which appear to them, in the main, judicious and equitable. If the principle, that suburban and town lots remaining unsold might be taken at the upset price, without another auction, as country lots now may be, were adopted, subject to a power in the Government to withdraw any such lots from sale when special circumstances should render it necessary; if the survey of land were always kept well ahead of the demand for it; and if the power of raising the upset price were exercised judiciously and sparingly, your Committee think the act would work satisfactorily. It is not the act itself; it is the absurd minimum price upon which it is intended to work which has rendered the carefully considered provisions of the statute almost useless. Your Committee believe that had the framers of this act possessed the same amount of local knowledge as of legislative skill, the price which would have been fixed on for the purpose of working out this act would have been 5s. an acre, and that this sum bears pretty nearly that proportion to the exchangeable value of an acre of land in Australia which the framers of the act supposed that 20s. would bear. Moderate and practical men, who adopt the policy of the Land Sales Act, who believe that it is not desirable that the lands of the Crown should be prematurely alienated before the spread

of population has imparted to them exchangeable value, and that it is not desirable that the present small population of the colony should, to the exclusion of future immigrants, possess itself of its enormous territory, but who at the same time do not wish to see the settlement of the country arrested, tenure in fee simple almost eradicated from our institutions, casual and temporary occupation ripening into permanent ownership, and dispersion and barbarism increasing, instead of concentration and civilization;—men who hold these views,—the very views of the British Government,—are almost unanimous in thinking that the price of 5s. an acre, with a power to Government to raise it when necessary, would be amply sufficient to effectuate them. It must be remembered, that the mania for land speculation did not deceive the colonists alone, that it was upon the basis of the inflated and fictitious value which that mania gave to land that the price of £1. per acre was established. . . .

To allow the opinion of the colonists no weight in this matter is to set aside dear-bought experience in favour of what has been shown to be baseless theory. It is those who live under laws, not those who make them, who are best able to judge of their expediency; and some credit ought to be given to the sincerity of those who will be the first to feel the bad effects, if any such there be, of the alteration which they seek for. It may not be the duty of the Home Government to yield a facile assent to every fluctuation of colonial opinion; but surely it is their duty not doggedly to resist, on a local and practical question, the firm and deliberate conviction of a large, intelligent, and enterprising community. The interests of the colonists and the Home Government are identical. It is the interest of neither that land should cease to be sold; it is the interest of neither that this great instrument of colonization should be forestalled and pre-occupied. Agreeing in their ends, they differ as to the means. The Home Government think the end can be effected by a price of twenty shillings per acre; the colonist by a price of five shillings. The Home Government base their calculations on the prices of a year of frantic speculation; the colonists on the practical experience of all years before and since. On this local and practical question which of the two is more likely to be right?

II. *The Temporary Occupation of Lands*

In considering the temporary occupation of Crown lands, your Committee observe, that the prohibitory minimum price renders this subject both important and complicated; important, because the terms of an occupation which is to last till an impossible event become in reality the permanent conditions of the tenure of landed property; and complicated, from the vain attempt to engraft an equitable and coherent system on a principle manifestly erroneous and impracticable. It is the effect of this fundamental error, the assumption,

namely, that land can be sold for a price which it will not and cannot fetch, that in any regulation having reference to sale Government necessarily gives more or less than it intends. Thus, when Parliament gives a pre-emptive right to the squatter at a price not less than one pound per acre, meaning to concede a substantial boon, it really gives him nothing; and when Government gives to the purchaser of Crown lands a right to occupy adjacent sections at a fixed rent until sale, meaning to give him only a temporary privilege, it really gives him a permanent ownership. If the return to the minimum price of five shillings an acre be desirable, for the reasons given in the former part of this Report, it is not less so on account of the facility and simplicity which it would introduce in the regulations for temporary occupation. That code has unavoidably become so complex that no one professes to be able to understand it; and considering that it is intended for the guidance of persons whose avocations require but a moderate share of intellectual attainments, and who are scattered over the remote interior, this complexity is no inconsiderable evil. The power of purchase is the natural corrective of the imperfections of such a code. If the price of land be reduced to a practical sum, the colonist is secured that nothing worse can happen to him than a purchase at that price; but where purchase is impossible, however great be the case of individual hardship, and such cases must necessarily occur, he is without a remedy. . . .

The benefits offered to the squatters by the land orders seem to be:—first, a renunciation of the claim to increase their licence fees at the will of the Government; secondly, compensation for improvements; thirdly, a pre-emptive right at £1. per acre; fourthly, a lease for eight or fourteen years, according as the run is situated in the intermediate or unsettled districts. The first two are so obviously just and reasonable, so easily carried out, and so beneficial in their effects, that no one could reasonably suggest an alteration in them. But the third, a pre-emptive right at £1. per acre, is, as has been already observed, utterly illusive and valueless; and the fourth is, when narrowly considered, a very questionable advantage.

The lease must, if it is to be a legal document, contain an accurate description of the land which it conveys. That description can only be derived from a survey; that survey can only be made at a very considerable expense; and that expense is to be borne by the squatter. Whatever may be the case with individuals, it seems extremely doubtful whether the squatters, as a class impoverished and embarrassed by high wages and low profits, can raise among themselves the expenses of the survey of the land which they occupy. Moreover, the difficulty and expense of survey is generally precisely in proportion to the badness of the run. In mountainous districts the boundaries following the line of the country are tortuous, and therefore long; those natural boundaries which were amply sufficient to mark the

limits of two neighbouring sheepwalks or cattle runs furnish but inaccurate data to the surveyor.

Considering these circumstances, which press so heavily upon this valuable class of colonists, your Committee would suggest that instead of these expensive and burdensome leases the price of land should be reduced to five shillings per acre; the squatter should be permitted to remain in occupation of his run on the present terms, till required for sale; that instead of his present worthless right of pre-emption, he should be allowed a pre-emptive right at a rate of not less than five shillings per acre over the whole of his run, subject to the same regulations as the present pre-emptive right; and in case he should be unable or unwilling to exercise that right, that he should be allowed compensation for his improvements. Such a plan, your Committee believe, would, without calling upon the squatters for the expenditure of a single farthing, confer upon them far greater benefits than the present land orders. In exchange for a worthless pre-emptive right, and a lease which will serve far more to embarrass than to secure them, it offers them a really valuable pre-emptive right, and an occupation probably in most instances far longer than the lease would give. . . .

From this view of the present management of Crown lands, it clearly appears that by rendering sale impossible a struggle for land has been introduced among its present occupants, and that in this struggle the interests of the community have been disregarded. What inducement does this colony, so rich in natural resources, offer to the emigrant capitalist? Government will sell him land, but only at an impossible price. Private proprietors will sell him land, but the land in the hands of private proprietors is, as has already been observed, some of the worst in the territory; he must therefore content himself with some lower kind of interest in land, the nature of which it will be difficult for him to understand, and when understood impossible for him to reconcile to his feelings and prejudices.

In a recent report of the Lords of Her Majesty's Privy Council¹ their Lordships contemplated that municipal bodies will be erected in proportion to the progress of settlement in the country; but their Lordships should clearly understand that if by settlement be meant the occupation of newly purchased land, there is no progressive settlement in this country. Such a settlement of the country has stood still ever since the passing of the Land Sales Act, and must stand still till it is repealed. Flocks and herds have extended, and may extend yet further into the remote interior; lands already alienated may be more carefully improved and more thickly peopled; but the proprietor of land knows well that if he take upon himself the burden of

¹ The Report on the Australian Constitutions (April 4, 1849), drawn up by Sir James Stephen, which formed the chief foundation of the Australian Constitution Bills of 1849 and 1850.

municipal taxation he must bear it alone; that as long as the price of land remains as it is there will be no new proprietors to bear it with him. The first step towards the establishment of municipal institutions is the lowering the price of Crown lands. In conclusion, your Committee would remark, that though the representations of colonists, when they tend to a premature division of the waste lands of the colony among its inhabitants, are naturally looked upon with distrust, when those representations have an opposite tendency, when the colonists come forward to warn the Government that they are virtually transferring the land to its present occupant, and are sacrificing the interests of intending emigrants, they are entitled to every respect.

III. *The Present Appropriation of the Land Fund*

Under this head your Committee proceed to consider the expenditure of the funds of this colony for the purposes of immigration. The practice of the expenditure of the land fund for this purpose has hitherto been to expend the whole of the funds at the disposal of Government for the introduction of labour, to contract a large debt for the same purpose, and then to desist from immigration altogether until the debt is paid off, and the land fund has again a considerable sum at its credit, and then to re-commence the same process. No attempt has been hitherto made to supply the colony with a continuous stream of immigration; we have had a succession of floods, each succeeded by its corresponding drought. The resumption of immigration is a cause of panic to the labouring classes; its discontinuance to the employers of labour. Immigration comes to be looked upon as an occasional incident rather than a necessary part of colonial administration. As the tendency in the colonial labour market is invariably in favour of the labourer, the cessation of immigration is attended with the most disastrous results to the employer of labour; it is not merely that his labourers raise their demands, but his power over them is seriously diminished. If it were only for the sake of the moral effect it produces, it is desirable that immigration should be continuous, and that whatever reduction is necessary to be made in its quantity, in order to secure its continuity, should be made. The time also seems to have arrived when the public mind in England has become sufficiently alive to the importance of emigration to recognize the unquestionable right of the colony to an efficient assistance from the mother country in removing her surplus population to a land where they not only obtain remunerative employment, but become immediately the largest consumers of English manufactures. It appears by the evidence of the immigration agent, that not only is the land fund exhausted, but a debt of £75,000 is also contracted, while the demand for *rural* labour remains unabated. Under these circumstances, your Committee cannot but regard with

apprehension the prospect of a total cessation of immigration. These considerations lead your Committee to the conclusion, that the time has arrived when the importation of immigrants to New South Wales, entirely at the expense of the colony, ought to cease. Your Committee recommend that no colonial funds be advanced for the purpose of bringing out immigrants, unless they both satisfy the regulations at present in force with regard to persons brought out at the expense of the colony, and are also able to contribute something towards the expense of their passage. What that sum should be your Committee cannot pretend to suggest, but would leave it to the discretion of the Commissioners, being well aware from painful experience how impossible it is to regulate on one side of the world the details of business to be carried on at the other. Your Committee would however remark, that it might be judicious, in the first instance, to require but a small sum, and when the practice has been established, gradually to increase it. Great as is the inconvenience which the colony must undergo in checking the immediate supply of labour, which, notwithstanding the importation of 18,000 persons, she still so urgently needs, it is better to make a firm stand at once, and not to go on indulging the ridiculous hope, that while the colony is willing to pay the whole of the expense of bringing out labour any one will be so quixotic as to share it with her. It is moreover absolutely necessary that the advantage of emigration to this colony should be kept constantly before the British public, and this can never be if the subject is suffered to go to sleep while funds are accumulating for the resumption of emigration. . . .

From the placing that portion of the land fund applied to emigration at the disposal of the Home Government serious evils have arisen. The colony and the Home Government have an equal interest in promoting emigration; but in apportioning the expense their interests are opposed. It is the interest of each to make the other pay as much as possible. In the adjustment of these conflicting claims the colony has been virtually unrepresented, for the Colonial Minister who represents her is still more closely connected with the Home Government. The consequence was such as might be easily foreseen; the colony has paid all. Over and over again has she spent all her available funds, and involved herself heavily in debt, for this object. Had these funds been at the disposal of the Legislative Council, there is no doubt that long before this a system would have been matured by which the Government, the parish, the emigrant, and the colony would have contributed equally to that in which they were equally interested. But the emigrant was there to defend himself, the Government had its ministers, and the parish its guardians; and so upon the colony the whole weight of emigration fell. . . .

Your Committee therefore recommend, that the power of carrying out the appropriation of the land fund, directed by the act 5 & 6 Vict.

c. 36, should be vested in your Honourable House, as the body best qualified to control the expenditure on public works and departments, as the body most fit to represent the colony in any negotiation with the Home Government on the subject of emigration, and best able to decide between the community and the individual in any local question in which their interests may be supposed to clash, and most interested in spending the land fund for the purpose of colonization.

(signed) ROBERT LOWE,

Legislative Council Chamber, Sydney,
2d October 1849.

Chairman ¹

19

DESPATCH FROM EARL GREY TO SIR C. FITZROY

(January 23rd, 1852) [EXTRACT] ²

(*P.P.*, 1852, xxxiv.)

The administration of the waste lands is a subject which I should have preferred to consider independently of the Constitutional Act, with which it does not appear to me to have any very close connexion; but as the Legislative Council have thought it right to introduce this topic into their remonstrance, I cannot do otherwise than advert to what they have urged. And in doing so it is my duty not to withhold the expression of my decided dissent from the doctrine, that the waste lands in New South Wales, or the revenue derived from them, are in any reasonable sense the exclusive property of its inhabitants, or that their representatives ought to have as of right the control and disposal of that revenue.

The waste lands of the vast colonial possessions of the British empire are held by the Crown as trustee for the inhabitants of that empire at large, and not for the inhabitants of the particular provinces divided by arbitrary geographical limits in which any such waste

¹ Robert Lowe, Viscount Sherbrooke, went to Australia for reasons of health in 1842. He soon accepted from Sir George Gipps a nominated seat in the Legislative Council; but he had an 'extraordinary faculty of dislike', and before long quarrelled with the Governor. In the controversy over the squatting question which followed the promulgation of the Orders in Council he took the side opposed to the squatters, and thereby supplanted Wentworth in the popular favour; and he also virulently denounced the proposed renewal of the system of transportation. In 1850 he returned to England in search of fresh worlds to conquer, though he showed his continued interest in colonial affairs by writing leaders for *The Times* in denunciation of Lord Grey and by mutilating in the House of Commons the New South Wales Constitution Bill, framed as it was by Wentworth. He was Chancellor of the Exchequer in Gladstone's first administration; but he reached the height of his fame when in 1866-7 he, the Sydney demagogue of former days, led the opposition to the further progress of parliamentary reform. 'The keenest partisan on the ministerial side,' says the *Dictionary of National Biography*, 'could not fail to admire Lowe's courage and sincerity of purpose.'

² This is the same despatch as that of which an extract is printed as No. 43 of Section I.

lands happen to be situate. Otherwise this consequence would follow, that the first inhabitants of any of these vast provinces (if possessing those representative institutions which arise as of right in ordinary British colonies) are indefeasibly entitled to administer all the lands and land revenue of the great unexplored tract called a province, of which they may occupy an extremity, wholly without regard to the nation which has founded the settlement, perhaps at great expense, in order to serve as a home for her own emigrants and a market for her own industry.

For the right thus defined and claimed by the Legislative Council, if their expressions were to be strictly taken, would belong as fully to the 4,000 inhabitants of Western Australia as to the 200,000 of New South Wales; nay, would have equally belonged to the first few families which settled in a corner of New Zealand, and would entitle such small community from the first day of its planting to the ownership of tracts sufficient to maintain empires.

When and on what condition it may be desirable to transfer the control of the waste lands of a colony to its local Legislature is in my belief a question of expediency, and not of right. Of expediency respectively both to the local community and to the people of the empire at large, whose claims require joint consideration and mutual adjustment. And I consider that of the Australian waste lands,—lands to which I must add that their present value has been mainly given through the expenditure incurred by this country in founding, maintaining, and defending the several settlements,—to be, for the present, wisely as well as rightfully vested in the general Government, under the strict rules imposed by Parliament.

But while such are my views as to the right under which this revenue is administered, I willingly acknowledge that it is one most essential duty of those who administer it to regard in an especial manner the interests of those who have established themselves on the spot, and whose purchases afford the fund to be so disposed of; and I believe this object to be attained in a high degree by the existing arrangement.

It will be remembered that the Waste Lands Act, now termed 'pernicious,' was adopted on the recommendation of a committee of the House of Commons, by which the whole subject was investigated with the utmost care. The object of this Act was to give permanence and more complete effect to a course of policy regarding those lands, which had already been adopted to some extent in the beginning of 1831 by the Executive Government. From the adoption of that policy may be dated the extraordinary, and I believe unparalleled, advance which the colony has made in wealth and prosperity.

Such being the circumstances under which Parliament has thought fit to entrust to the Crown the expenditure of the territorial revenue in the Australian colonies, with the obligation of applying not less

than one half of the net receipts from the sale of land to emigration from the United Kingdom, it is to me equally a subject of surprise and great regret that the Council should have seen reason to express the opinion that the duty thus imposed on the advisers of the Crown has been so ill performed as to warrant the assertion that the use of the territorial revenue had been in great measure confined to the introduction of people unsuited to the wants of the colony, and in many instances the outpourings of the poor houses and unions of the United Kingdom. The view thus communicated to me is certainly inconsistent with any of the detailed information which had been furnished respecting the successive emigrant ships as they reached Australia, and with the general opinions previously transmitted from all the colonies to which emigrants have been sent.

Emigration to New South Wales by means of public funds having been resumed in the year 1847, no fewer than 31,400 persons had been sent out to this one colony since that time by the Emigration Commissioners at the date when they made their last annual report on the 2d of May 1851; and any one who consults the detailed reports which have been made respecting these emigrants on their reaching the colony, and which are republished in the annual reports of the Emigration Commissioners, may easily see how small, amidst this great multitude, is the proportion of persons of whom there has been any serious complaint. Nor have there been wanting general testimonials of a gratifying nature to the satisfaction felt with the character of the emigrants selected and sent out by the Emigration Commissioners.

The only part of this emigration against which any decidedly unfavourable opinion was expressed, was that which was called 'Assisted Emigration.' But this mode of promoting emigration was adopted, contrary to my own opinion and that of the Emigration Commissioners, in deference to the urgent representations of gentlemen who were supposed to enjoy the confidence of the colonists, and more especially of one to whom the Legislative Council had granted a salary for his services as agent for the colony, and who was, therefore, entitled to be listened to with attention when he urged on its behalf that the plan to which I have adverted should be adopted.¹ For this reason, and because in carrying on a service of so comprehensive a character, and comparatively so recent an origin, as emigration, I have always thought it right not to refuse a fair trial to any reasonable project advocated by gentlemen interested in the supply of labour to the colony, I gave directions to the Emigration

¹ The agent referred to is the Hon. Francis Scott, who had held that position since 1844, though it was not until 1849 that the appointment secured statutory recognition. Of his zeal for the interests of New South Wales as he conceived them there can be no question, and he was fortunate enough to retain the confidence of the colonists in despite of his 'squatting' sympathies and of his well-meant but not always happy attempts to stimulate emigration. He was M.P. for Roxburghshire.

Commissioners to try, as an experiment, and with great caution, the plan of what has been called Assisted Emigration. At Sydney (at Melbourne a different opinion was entertained) the experiment was considered to have failed, and it was therefore immediately discontinued.

But setting aside this experimental measure, I am fully justified in asserting that all the reports as to the emigrants made at the time of their arrival tend to establish the conclusion that the arduous undertaking of collecting and conveying to Australia so large a body of people from all parts of the United Kingdom has been executed in a manner highly advantageous to the colony, and creditable to the Board by which it was conducted. I must add, that the reports which support this conclusion were made by persons who have shown themselves vigilant in detecting, and prompt in exposing, those cases of abuse which it was impossible to expect should not occasionally occur in conducting emigration on so large a scale; nor can there be any doubt that these reports expressed what was the general opinion of the settlers at the time.

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DESPATCH FROM SIR J. PAKINGTON TO SIR C. FITZROY
(December 15th, 1852) [EXTRACTS]

(*P.P.*, 1852-3, lxiii.)

Her Majesty's Government are ready to accede to the wishes of the Council and of the Colony in a spirit of entire confidence.¹ They are indeed unable to concede the claim advanced on behalf of the colonists to the administration of the waste lands as one of absolute right, in which shape the petition asserts it. . . . But they have arrived, after full consideration, at the conclusion that, under the new and rapidly-changing circumstances of New South Wales, the time is come at which it is their duty to advise Her Majesty that the administration of these lands should be transferred to the Colonial Legislature, after those changes in its constitution have been effected, which are adverted to in the petition. Without believing that the operation of the Land Sales Act has been in truth pernicious to New South Wales, and with a strong persuasion that much benefit has resulted to the Australian colonies in general from that adherence to fixed principles in the disposal of the land fund which it enforced, they are of opinion that those benefits are no longer such as to countervail the disadvantages attending its restrictions. They think those restrictions

¹ The Declaration and Remonstrance (Section I, No. 42) was reaffirmed by the new Legislative Council of New South Wales, elected in 1851, at its first session. To the Declaration was appended a petition to the Queen asking for the entire management of all the colonial revenues and guaranteeing that, upon the establishment of a constitution similar to that of Canada, an adequate civil list would be freely granted in return.

should no longer be maintained, unless they are so by the will of the colonists themselves, either as regards the selling price of land or the application of the proceeds. As to the latter, they are clearly of the opinion that the portion now expended, according to the terms of the Act, for general purposes, under the authority of the Lords Commissioners of the Treasury, ought to be entrusted to the control of the Legislature. And with respect to the other moiety, although the benefit which they believe New South Wales to have, on the whole, largely derived from its expenditure on immigration, renders any change in its disposal a matter of more serious doubt, they do not propose to except it from the surrender. For they are persuaded that the cost of an immigration which has become more than ever necessary to the welfare of the colony, and is far more important to its interests than to those of the mother country, will be also best undertaken by the Legislature of the former.

Her Majesty's Government are not unmindful of the changes to which this concession may possibly lead, in the amount of revenue to be derived from the disposal of lands, and in the facilities afforded by the land fund for emigration from this country. But they are willing to rely in this, as in other respects, on the foresight and political judgment of that body to which the supervision will be transferred, especially in its improved shape, and they are bound to add, that it appears to them a matter of justice, as well as of expediency, that concessions on so important a subject which have been made for some time to the principal North American colonies, and recently to New Zealand,¹ should no longer be withheld from New South Wales.

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DESPATCH FROM MACARTHUR TO LABOUCHERE [EXTRACT]²

(*P.P.*, 1857, Session 2, xxviii.)

Toorac, near Melbourne, 26 August 1856.

SIR,

By this mail a despatch, the copy of which I enclose, has been addressed to the Colonial Land and Emigration Commissioners, conveying to them the wishes of this government relative to the appropriation of the sum of 100,000*l.* voted, under the Estimates of this year, for the purposes of assisted emigration to Victoria. Allusion is made in that despatch to the intended discontinuance of the services

¹ The concession of control of lands was made to New Zealand by section 72 of the Constitution Act (see above, Section I, No. 45).

² Major-General Edward Macarthur was at the time in command of the troops in Australia. He had become Acting Governor of Victoria on the death of Sir Charles Hotham. He was the eldest son of John Macarthur of Camden and the brother therefore of James Macarthur (see above, p. 39, note 1).

of the Commissioners as agents for immigration to this colony, and it is my duty upon this point clearly to explain to you the course which my Executive Council have decided to adopt, and the grounds upon which they have acted.

I need hardly state that, since the commencement of the new constitution, the subject of immigration has demanded and received the most anxious consideration on the part of my advisers. Situated as the Australian colonies are, both geographically and with reference to the rapid development of their resources, a steady and effective supply of labour is almost their first necessity; and its promotion cannot but be one of the most important functions of the Executive Government. There is, in this respect, a marked difference between their position and that of the North American Provinces. It has been found sufficient to confine the duties of the administrations of those colonies in connexion with emigration to the necessary surveillance over a regular and important trade, the protection of the passengers at sea, and the facilities for their reception on shore and transmission into the interior; but the attraction of the Australian gold fields, even when most vividly brought under notice in the United Kingdom, has failed to secure a steady stream of eligible labour to her markets, without assistance from the public funds and the active promotion of paid agents in the United Kingdom.

It is not necessary that I should, on the present occasion, inform you in detail of the manner in which it will be proposed to apply the funds which may be voted for immigration, so far as the operations of my government within the colony are concerned. These arrangements, however, imperatively involve the existence, in the United Kingdom, of a paid agency for immigration, directly responsible to the colony; and it has been necessary to decide whether application should be made to Her Majesty's advisers to allow the present department of Colonial Lands and Emigration to act in this capacity, or whether a separate department, not connected with the Imperial Government, should be established for this purpose.

For many reasons the continuance of the present arrangement might appear advisable. I cannot speak too highly of the evident anxiety which the Commissioners have felt to discharge the duties entrusted to them to the satisfaction of the colonists of Victoria. Many of the suggestions which my predecessors had directed to be made to them have been readily adopted. None have been rejected without careful and impartial inquiry. The funds at the disposal of the Board have been generally expended with economy and prudence, and I have no reason to believe that, in the appointments which they have made, the most scrupulous care has ever failed to be exercised by the Commissioners or the superior officers under their survey. Whatever complaints may have been made by other governments relative to the selection of emigrants, with proportionately few excep-

tions those selected for passages to Victoria have been, especially during the last two years, well received by the colonists.

But, on the other hand, it is the opinion of this government that the management of the large funds set aside for immigration should not in future be entrusted to a department, however efficiently conducted, which is not directly responsible to, and under the control of the Colonial Administration. Although conscious of the difficulties which will undoubtedly at first attend any change in this respect, they believe that those difficulties will be far less than such as may be expected to arise from the want of control by the colony over so important a department as that conducting the introduction of labour must be. Nor have they failed to notice the evident wishes of Her Majesty's advisers in this respect. I allude to the recent debate in the House of Commons on the Estimates for the Establishment of the Colonial Land and Emigration Commissioners. It appears from the only report of this debate which I have been able to obtain, that the future duties of that department have been clearly defined as 'directing and controlling, but not stimulating emigration.' No active exertions to promote the settlement of this colony can therefore be expected from the Board, and it would be manifestly impossible for me to recommend to the Legislature that the duties of their agency for emigration in England should be passive only.

Under these circumstances, I have to notify to you the intention of my advisers to recommend that from the 1st of July next the operations of the Commissioners in connexion with emigration to Victoria be discontinued, and their account with the colony closed. . . .

III

TRANSPORTATION

IN 1830 the colonies of New South Wales and Van Diemen's Land, though the number of their free inhabitants was steadily rising, were still primarily penal colonies. Transportation to Australia was the fate of all criminals whose crimes, though serious, were not punishable by death. It may be that, as Wakefield asserted, the criminals sentenced to transportation regarded it with hopefulness rather than with dread [1]; but it was in reality—at any rate in Van Diemen's Land, where there was a higher proportion of convicts to free men—a system of severe discipline, more severe than it had been in earlier years [2]; and only its obvious economic advantages can have induced the free settlers to submit quietly to it. Submit, however, they did: it was in England, where prison reform had been much to the fore recently, that the opposition to transportation first raised its head. The agitation was led by Archbishop Whately, but it found its most noteworthy expression in the inquiry conducted in 1837-8 by a Committee of the House of Commons under the chairmanship of Sir William Molesworth. The most striking evidence bore upon the moral effects of transportation on the colonies: even Lieutenant-Governor Arthur could not deny that they were bad [3], while Molesworth afterwards declared that a community had been produced 'where vice is the rule and virtue the exception'.¹ The report of the Committee was a sweeping indictment of the system and recommended its abolition [4].

It is easier for a Parliamentary Committee to recommend such radical reforms than for a Government to carry them out; and transportation had still some years to run. But 'assignment', the most characteristic feature of the system, was put an end to, despite strong colonial protests [5]; transportation to New South Wales was stopped altogether; and other reforms were instituted with a view to diminishing the number of convicts sent to the colonies. While these reforms were still incomplete, the Peel Ministry came into office. They did not altogether agree with what had already been done, and found the problem perplexing in the last degree [6]. By the end of 1842 Stanley and Graham had produced an elaborate scheme, under which they proposed to send all the convicts of Great Britain to the single colony of Van Diemen's Land [7]. But the scheme was soon an utter failure even from the material point of view [8]: the Treasury would not, and the colonists said they could not, bear the burden of expense which the new system involved. In the course of the years 1844-6 all sorts of expedients were tried for relieving Van Diemen's Land, but the situation went from bad to worse, and it gradually became evident that the moral objections to the Stanley system were even weightier than the material. By this time Gladstone was in office, and he took the responsibility of suspending transportation to Van Diemen's Land for two years [9]. The question what changes should be made at the end of that period he had perforce to leave to his successor.

Both Grey and Russell had been in general sympathy with the Report

¹ May 5, 1840: Egerton, *Selected Speeches of Sir W. Molesworth*, p. 111.

of 1838, and in its first form their policy was not very different in principle from that advocated in the Report. Transportation as a punishment was to be abolished, and for it were to be substituted periods of separate confinement and of labour on public works in England or at Gibraltar or Bermuda, followed by compulsory expatriation. Many misgivings were, however, felt in England at the far-reaching nature of these reforms—notably by the Judges, who expressed their fears to a Committee of the House of Lords—and after further consideration the Ministry decided to send convicts out after their punishment not as ‘exiles’ but as ‘ticket-of-leave men’ under discipline [10], and not to *any* colonies but to such as might be willing to receive them and to Van Diemen’s Land, which had no choice. From the first, however, the execution of this new policy was beset with difficulties. Even in Van Diemen’s Land the two years’ suspension of transportation and the steady drain of free labourers under the pressure of convict and ex-convict competition had led to a widespread demand for the entire abolition of the system [11]. And attempts to relieve Van Diemen’s Land of part of the burden had little success. In New South Wales the Legislative Council was not disinclined to receive ticket-of-leave men, labour being scarce in the country districts, but public feeling both in Melbourne and in Sydney was strongly the other way [12, 13], and the Legislative Council made haste to change its mind. Still more indignantly did the Cape refuse to receive a shipload of Irish convicts whom Lord Grey had sent [14]. The improvements introduced by Sir William Denison in Van Diemen’s Land itself and the opening in 1850 of Western Australia, the last convict colony [15], could not avail to stem the tide of colonial feeling. Opinion in England had still to be converted, but the steady pressure from the colonies was greatly strengthened when in 1851 gold was discovered in New South Wales and Victoria. Denison might expose the hypocrisies and exaggerations of the Anti-Transportation Leaguers in Van Diemen’s Land [16]; but the problems in the gold-producing colonies were likely to be difficult enough in all conscience without this complicating factor [17]; and the possible advantage to Van Diemen’s Land employers could not be allowed to weigh in the balance against the insistent demands of the rising democracies on the mainland. The Ministry of Lord Derby examined the question afresh, and before he left office Sir John Pakington had the satisfaction of breaking to the inhabitants of the Eastern Colonies the joyful news that transportation thither was to cease for ever [18]. For thirteen years more—long enough to show that the moral evils of the system in its latest form were much exaggerated—convicts continued to be sent to Western Australia; but in December 1852 the right of the colonists to determine whether or not their communities were to be the receptacles of England’s criminals was vindicated once and for all.

HOUSE OF COMMONS COMMITTEE ON SECONDARY PUNISHMENTS: EVIDENCE OF WAKEFIELD [EXTRACTS]¹

(P.P., 1831, vii.)

Veneris, 12^o die Augusti, 1831.

Mr. *Edward Gibbon Wakefield* called in; and Examined.

1393. Are you the author of a book upon the Punishment of Death?—Yes, I am.²

1394. Have you had occasion to inquire into the state of mind of persons capitally convicted in Newgate?—I have.

1395. Have the goodness to state to the Committee the general state of mind of those persons under sentence of transportation.—I had particular opportunities of observing the impression made upon the minds of convicts under sentence of transportation; because, in the first place, there is always a very considerable number of such persons in Newgate; and secondly, Newgate is a sort of lodging-house for convicts coming from the country prisons; they remain but a short time, but quite long enough to give any body who is an inmate of the prison an opportunity of observing the impressions upon their minds. I took very great pains, during the course of three years, to observe the state of mind of those persons, and I do not now remember a single instance in which a prisoner appeared to me to be deeply affected by the prospect of being transported to the colonies: on most occasions when I examined any prisoner I found his mind bent upon the colonies, when he expected to go there, and bent upon attaining a degree of wealth and happiness, such as he had no prospect of attaining in this country. Amongst a number of persons sentenced to transportation, and living together, I have generally found one, and sometimes two or three, who had already been in the colonies; and it is very seldom a session passes at the Old Bailey without the conviction of some man who has been transported before; consequently the convicts associating with those men have the best opportunities of hearing reports as to the state of the convicts in New South Wales and Van Diemen's Land: these reports are always exceedingly favourable; in many cases, no doubt, they are much exaggerated in favour of the convict, because a man who

¹ This Committee on Secondary Punishments was set up in 1831 on the motion of Colonel T. H. Davies, member for Worcester. Its report, made in 1832, recommended certain reforms, but is not to be compared in importance with that of the Committee of 1837-8 (below, No. 4).

² *The Punishment of Death in the Metropolis* was composed by Wakefield immediately after his release from Newgate Prison in May 1830, and was published in 1831—unlike the more famous *Letter from Sydney*—in his own name. It was an able indictment of the widespread use of the punishment, at any rate in theory, under the existing penal system; and was quoted with approval by Archbishop Whately in his *Thoughts on Secondary Punishment* (1832).

returns from transportation takes pleasure in making people believe that he has cheated the law, and that he has enjoyed himself notwithstanding the sentence passed upon him. But whilst some allowance must be made for this exaggeration of the returned convict, the story he has to tell is, when true, a very favourable one in the estimation of these people: he states such facts, as that a great number of the persons who keep carriages in Sydney were once convicts, and he gives the names of those persons, and describes how they, in the course of a very few years, have raised themselves from the situation of convicts into that of the most important persons, in point of wealth perhaps, in the colony. All these representations are received with great delight by the convicts, and those who think upon the subject at all go out with the prospect of benefiting themselves and doing well. A great number never think on the subject at all: they are of reckless habits, perfectly careless of the future; but they have no impression on their minds of the probability of receiving any pain, they have no dread of any; they are going to be removed, they would be glad to remain if they could, and they make great efforts to remain even in the hulks in a great many cases; but it is always to be discovered that their object is not to avoid any pain to be inflicted upon them during the passage or in the colonies, but to remain in this country, and be able in a short period to resume their old habits, and lead that life of riotous enjoyment which belongs to the habits of criminals.

1397. Do they generally indulge the hope that their wives and families will come to them?—Yes, that they will reach them; they generally make applications to the Government for the purpose, and it is sometimes done; and if that is the case once in 20 times, the general impression will take place that it may be so in the case of each.

1432. Do you think that criminals in general are pretty well acquainted with the state of the colony, as to its advantages in climate and other respects?—Yes, much more so than most other people; nearly all of them who are habitually criminals, and who have an opportunity of associating and conversing with returned convicts.

DESPATCH FROM ARTHUR TO GODERICH [EXTRACT]¹
(*P.P.*, 1837, xix.)

Van Diemen's Land, Government House,
8 February 1833.

MY LORD,

I had the honour to receive by the 'Georgiana' transport, on the 1st instant, a communication from Mr. Hay² transmitting the copy of a report of the Select Committee of the House of Commons upon secondary punishments, and by your Lordship's desire, inviting my particular consideration of that part of the report which relates to the state of the convicts in the penal settlements, and requesting that I would communicate to your Lordship any alterations which I might deem it expedient to make, with the view of ensuring the necessary punishment of convicts in these colonies.

In obedience to your Lordship's commands, I have read the report with the utmost attention, and a great part of the evidence on which it is founded.

Individuals possessing talent and opportunities for observation, who, after a residence in the settlements, have returned to Great Britain, are so few in number, that I should imagine it to be almost impossible to conduct in England, successfully, any inquiry having for its object the development of the effects of transportation; while, therefore, this admirable report contains so much general information of a most useful character, I think it may also be inferred from its contents that the Committee have not obtained those full details which would have enabled them to appreciate, in all its bearings, that part of the question referred to them which regards the result of removing criminals from New South Wales to Van Diemen's Land: indeed, from the very conflicting nature of the evidence, it seems to have been by no means easy to ascertain the precise management of the prisons, penitentiaries and hulks,³ situated in London itself, or comparatively in its vicinity. When, therefore, it is considered that the colonies are 16,000 miles distant, and that they are

¹ Colonel (afterwards Sir) George Arthur was Lieutenant-Governor of Van Diemen's Land from 1823 to 1836. He had previously been Lieutenant-Governor of British Honduras from 1814 to 1822: from 1837 to 1841 he was Lieutenant-Governor of Upper Canada, and from 1842 to 1846 Governor of Bombay. His career in Canada showed that he lacked imagination, and his austere character and formal manner prevented him from becoming popular, but he was a very able administrator, of tireless energy and resolute will. Whilst he was unsympathetic towards free settlers, Van Diemen's Land made great progress under his rule.

² R. W. Hay was Permanent Under-Secretary for the Colonies from 1825 to 1836. The newer men in the office, such as Taylor, regarded him as incompetent, and it is certain that Stephen did a great deal of the work which was really his. He was, besides, a Tory. In 1836 Lord Glenelg had to choose between dismissing Hay and losing Stephen, and Hay was at last dismissed.

³ See below, p. 288, note 1.

making the most rapid progress, not only in wealth and importance, but also in convict discipline, and that the reports of individuals who may have been perhaps not more than two years absent, relate to a state of things which may not now have any existence, the difficulty of the investigation becomes so evident, that one cannot avoid expressing surprise at the general correctness of many of the views taken by the Committee, although it may be impossible to coincide with them in some of their principal deductions.

The little dread said to be entertained by certain classes of the crime-population, of transportation, with which the Committee appear to have been so much impressed, as to have founded upon it perhaps the most momentous of their recommendations, arises mainly out of the circumstance, that during General Macquarie's administration¹ the fact of having been transported was regarded by Government as an expiation of the crime of which the individual had been convicted in England, and the Governor was eager in every way to advance the convict's interests by granting an early emancipation, by facilitating his acquisition of wealth, and by urging his admission into the best society whether civil or military.

The consequences of this benevolent but imprudent course of action were soon developed; the convicts regarded themselves as on a par with the free, and that class of emancipists sprung up into wealth and importance, who, of course, have taken great delight in making their good fortune known to their friends in England, and in dissipating by their representations any dread they might feel at being banished in the same manner with themselves.

In the commencement of the colony of New South Wales, there was not that material for punishment which may now be commanded. The free population were few in number and of an inferior caste; the country was not known; the constabulary was imperfect; the military force was insufficient; the 'control of power' and the influence of opinion were both wanting; labour was of great value; many public duties of great consequence were not even undertaken; and above all, several offices of considerable importance were actually filled by convicts themselves; in truth, the colonies were not in a state fit for the reception and control of convicts. No country before it is colonized can be so, and the Governor found it necessary to rule by indulgence rather than by a reasonable coercion.

These circumstances sufficiently account for the lax discipline which at one time obtained in New South Wales, and show very clearly how, without any one defect necessarily inherent in the system of transportation itself, great and unavoidable abuses may have obtained temporarily to such an extent as to bring discredit upon it.

Van Diemen's Land fortunately had not made sufficient progress in the time of General Macquarie, to induce any of his protégés to

¹ See above, p. 12, note 2.

settle here. It in fact did not exist as a colony until long after the peace of 1814, since which time His Majesty's Government has been enabled to bestow more attention upon colonial questions, as well as upon matters of internal policy. Capital has been more difficult of investment in England, and persons of the middle order have emigrated, having been unable easily to find appropriate occupation at home.

These and similar causes, when taken in connexion with the comparative limitation of the land of the island, securing for it a greater price and more minute subdivision, have given quite a different character to the colony, and have kept the convicts within due restrictions.

The abuses, information of which has unfortunately reached the criminal population of England, have not existed to any extent in Van Diemen's Land since it began to rise into importance, neither do they now exist. The free occupy all the places of trust and emolument; the settlers possess that degree of wealth, and there is that respectability of appearance about their houses and establishments which are necessary to secure the respect of their servants, and to give stability to society.

In Van Diemen's Land the districts are smaller, and the population less scattered than in the wide-spreading territory of New South Wales. Hence few settlers in comparison are at any very inconvenient distance from the police magistrate, and thus (though more is required in this respect), subordination is more perfectly insured.

The convict is, by the Government regulations in this colony, deprived of every improper indulgence; he is assigned generally to a settler in the interior, where he is employed in all the hardships of clearing and cultivating forest land; he is sufficiently fed and decently clothed, but he is allowed no wages; idleness and insolence of expression, or even of looks, anything betraying the insurgent spirit, subjects him to the chain-gang, or the triangle, or to hard labour on the roads.

Deprived of liberty, exposed to all the caprice of the family to whose service he may happen to be assigned, and subject to the most summary laws, the condition of the convict in no respect differs from that of a slave, except that his master cannot apply corporal punishment by his own hands or those of his overseer, and has a property in him for a limited period only.

I am aware it has been argued, that transportation does not operate as a punishment, because the convict's situation is improved by being removed from a country in which labour is cheap, to one in which it is dear; from a country in which 12 hours' daily labour will scarcely procure wherewithal to satisfy hunger, to one in which indolence itself can obtain a sufficiency; but this opinion rests upon mistaken views.

The convict's observation and reasoning generally relate to his perceptions of present objects, and he compares his present condition with that of the freeman or the ticket-of-leave man who is working with him in the same field, and he is in consequence haunted with a continual sense of degradation and a vehement desire to escape from it. Nothing compensates for the loss of liberty; and it has accordingly often happened, even when the convicts were under less perfect discipline than at present, when bush-rangers were out, and combinations existed, that these men would undergo the greatest hardship, and make great sacrifices in order to obtain a ticket of leave. While the convict in England, even under the most severe infliction which the laws of a civilized country will admit of, is, as appears by the evidence before the Committee, an object of envy to the lowest class, who know that however strict the discipline may be to which the criminal is subjected, it is yet such as not to injure his health, or to preclude his eating a sufficient quantity of wholesome food, and therefore cannot help comparing this with the miseries of his own situation and that of his family, who, after a hard day's toil in honest industry, cannot procure wherewithal either to be fed or to be clothed. But in Van Diemen's Land, the convict may be well sheltered, well fed, and decently clothed, and yet be made to feel that his condition is wretched indeed, and degraded, compared with that of the free.

In England, while employment is so scarce that the operative must starve, though the convict is well taken care of, it cannot but be that, under every restriction, every severity of discipline that ingenuity can contrive, or vigilance execute, the condition of the convict must present to the lower class that which they will be too apt to consider complete evidence of the inutility and folly of virtue, and the paramount advantage of vice. The very reverse of this, I submit, I have already shown to obtain in this colony.

It has been asserted, that the circumstance of offenders, when receiving sentence of transportation, thanking the judge for the boon they declared that he had conferred upon them, is a proof of the little terror now associated with the idea of transportation; but this is evidently a mere bravado; and instances might be recorded in Van Diemen's Land in which individuals have affected to treat with indifference the order for their removal to Macquarie Harbour;¹ whilst, at the very same time, other criminals were actually committing murder at that settlement, in order to enjoy the excitement attendant upon being sent up to Hobart for trial, although aware that in the ordinary course they must be executed within a fortnight after arrival.

¹ Macquarie Harbour, on the west coast of Van Diemen's Land, was selected in 1821, on account of its isolated position, as a settlement for the worst class of criminals. Arthur transferred them to Tasman's Peninsula near Hobart.

If it be said that criminals commit offences for the very purpose of being transported, the fact, to say the least, is exceedingly difficult of proof, and in most instances rests upon their own statements; but, that they have made the most desperate attempts to escape from transportation is undeniable; for they have been taken out of vessels in which they have lain cramped up and without food for many days, in the endurance of torture, until their limbs began to mortify.

If, my Lord, the evidence or conduct of particular individuals can be relied on as proof of the efficiency or non-efficiency of transportation, I am sure that a strong case, indeed, could be made out in its favour. I might instance the rioters who arrived by the *Eliza*, several of whom died almost immediately from disease, induced apparently by despair. A great many of them went about dejected and stupefied with care and grief; and their situation, after assignment, was not for a long time much less unhappy.

It may be observed, that it is admitted by all, that the country population have a great terror of transportation; but that the London thieves, and others of that description, are the persons who dread it least, while they form the class it is most desirable to intimidate.

I have already submitted, my Lord, that the little dread of transportation entertained by the gentlemen convicts and London thieves is the result of advices sent by individuals in New South Wales, describing the condition of the convict as it was formerly, and not as it now is; and that, therefore, these persons may disregard it, not because it is not in itself a severe punishment, but because they have received an account of it which is, in a great measure, without any foundation, in reference to the present.

Now it appears that farmers¹ who have not received this false intelligence fear it extremely; it is, therefore, quite reasonable to conclude, that as soon as the cause of the present disregard of transportation, if it really exist, is removed, the effect will be removed also; and the London thief, as well as the farmer, will participate in that dread of involuntary expatriation which is common to all mankind, more particularly when it is associated with the expectation of slavery.

When the present condition of the convict is known in England (and the Act of His present Majesty, limiting the power of governors with respect to pardons and tickets of leave, if published, will tend to enlighten the public in regard to the views of His Majesty's Government respecting transportation), there can be little doubt that it will resume its terrors, and will be found as efficient a preventive of crime in the towns as it is admitted by all to be even now in the country.

I beg, however, to observe, that I use this language comparatively, not absolutely. I do not imagine that any severity, that any discipline, that any system of punishment whatever, will deter men from crime

¹ This presumably refers to the agricultural population as distinct from dwellers in the towns, where the criminal population congregated.

merely through fear; and I believe that transportation is more desirable than any other mode of punishment, because, while it will be more dreaded than penitentiary imprisonment, it will at once relieve England of the depraved individual, and, in a great majority of cases, effect a reformation of his character.

It is quite evident to me, that the system of punishment in penitentiaries, and by more severe labour in the dock-yards, as recommended by the Committee, will be unavailing, however much it may be an improvement upon the system of imprisoning in the hulks, or in the ordinary gaols.

If the Committee are prepared to recommend, not only that the convict shall be worked in England as hard as those free men who now are employed at the most severe, and sometimes most unhealthy labour, for from 12 to 16 hours a day; and if, in addition to that, they will propose that they shall not receive either sufficient food or sufficient clothing, or sufficient shelter, then I shall admit that they have reduced the convict to a condition in which he would not be envied, but in which, as I collect from the evidence before the Committee, he would still be on a par with the free, or at least with hundreds of thousands of the free; but even were this done, and were such arrangements made that no criminal should ever leave the penitentiary without carrying on his countenance the certain signs of misery and starvation within, still there would be no terror in imprisonment to that very class who are the most liable to be seduced into crime.

Feeling assured, however, that such a course never will be adopted in England, I can only express my conviction that it is impossible, in the present state of the country, to render the condition of any criminal, for whom the Government of the country may have engaged to supply necessary food and necessary shelter, other than one of envy, and probably of competition.

It is in vain, as it appears to me, to propose or to execute the most severe plan of discipline; it must stop short of the severity which would destroy health; it must even be such as to preserve the cheerfulness of the prisoner; for if he ceases to be cheerful and becomes gloomy, bad health is the almost necessary consequence.

Reformation can never be accomplished in the penitentiary, or in the American prison; the maintenance of strict silence, and the mechanical adaptation of the prisoners' habits to certain regulations, constitute the whole scheme. This punishment does not operate by eliciting reflection, or by inducing a healthier activity of mind, or by diverting the attention from evil, and directing it to that which is good, but by quenching the natural energy of the mind altogether. The use of that faculty by which it is principally kept in motion is denied; and the man sinks into the condition of an automaton, trained without an object in view, but to change its position or posture at the command of a keeper.

Yet even this is not a severe punishment, for the man's capacity for action soon adapts itself to the limitations by which he is surrounded; it does not change the bent of his inclinations, but only for a time diminishes their intensity, whether directed towards good or evil. Hence the severe class at the penitentiary is so little dreaded, that men, from motives of expediency, request to be allowed to remain in it; and in America the best informed have discovered that crime is not diminished by prison discipline, that their crime population is increasing, and that transportation has in consequence become necessary.

Yet, my Lord, the Committee recommend this very discipline as the most effectual for the prevention of crime, though it appears that the prisoners themselves who have endured it are not improved in morals, but return again and again; how, then, can it be expected to influence others?

The Committee have recommended transportation to be carried into effect to a greater extent than ever; but they have advised also that a certain period should elapse between the sentence of transportation and the transportation itself.

Does not this necessity of transportation, after imprisonment or hard labour in the dockyards, prove that these severities will not improve the convict's character, or make him a good citizen in England? in other words, will not deter him from again committing crime? and if these severities have not had any beneficial effect upon himself, what influence can they be expected to exert, through his intervention, upon others?

This intermediate punishment, therefore, will neither improve the criminal who suffers it, nor those who merely witness its infliction; on the contrary, the effect of the whole, if put in execution (even upon the showing of the Committee itself), will be little more than this; every convict who is sentenced to transportation will, before his departure, be fed and housed for from one to four years, in such a way as to excite the envy of his countrymen, while he himself regards transportation as a remote contingency, and in the interim annoys his friends and the Government with incessant solicitations for a remission of that, the only severe part of his sentence; while neither his employment in the dock-yard, nor his discipline in the penitentiary, will teach him the sort of labour he will have to perform in the colonies; so that he will lose from one to four years of the most active part of his life.

I would observe, that transportation to Van Diemen's Land possesses all the advantages and none of the disadvantages of home imprisonment. The prisoner, on his arrival, even under the most favourable circumstances, is placed in a situation from which he sees every other class to be better off than himself; he is a slave, but while he feels deeply the degradation of slavery, he looks forward to its

conclusion, in the hope that he will then with ease be able to support himself with comfort by his labour.

Allow me, my Lord, before concluding this despatch, to state to your Lordship that it is of the greatest consequence to keep in mind, first, that no such state of things exists in these colonies—at least, I can with confidence affirm it does not exist in Van Diemen's Land as the Committee evidently, from the questions they have proposed to the evidences they have examined, and from certain observations they have given in their Report to the House, suppose; and, secondly, that the account sometimes even yet sent home by convicts, to the effect that all is comfort and recreation here, are most untrue, and that their design in sending such accounts can be explained and exemplified in a manner the most satisfactory, which will prove to your Lordship that in fact it is the misery which the deprivation of their liberty imposes upon them that actually gives rise in very many instances to the misrepresentations received in England with such implicit credit. . . .

3

HOUSE OF COMMONS COMMITTEE ON TRANSPORTATION (1837): EVIDENCE OF ARTHUR [EXTRACT]

(*P.P.*, 1837, xix.)

Chairman.] 4592. What do you think is the effect of the whole convict system on the morals of the free inhabitants of Van Diemen's Land, mixing up a population of emancipists, expirees and free emigrants together, on the general morals of the whole community?—I think it is impossible that such a class of persons can be residents in any community without the most polluting consequences. If the advantages of transportation could not be clearly made out as beneficial to this country, certainly I think, as regards the colony itself, that it should be put a stop to; but nevertheless, from the measures adopted in the colony, the evil effects of such a class of men are not so great as might be imagined. I think there has not been as much done to assist the colony under such peculiar circumstances as was required with regard to religious instruction and the education of children. As the community is so small, if great attention were paid to those particulars, the evils arising from transported felons being in the colony I think would be very considerably diminished.

4593. On the whole, you have no doubt that the continuation of the system tends to demoralize the community?—Yes; I think, on the general principle, there cannot be such a class of persons in any community without it.

4594. Then your opinion on the whole is this, that nothing will excuse it except the paramount importance of such a settlement to the mother country?—Yes, I should certainly think so.

HOUSE OF COMMONS COMMITTEE ON TRANSPORTATION: REPORT [EXTRACTS]

(*P.P.*, 1837-8, xxii.)

In Van Diemen's Land the employment of convicts out of chains on the roads has not occasioned evils to the same extent as in New South Wales. This result is partly to be attributed to the better system of management which is in force in that colony, and partly to the nature of the general system of government which has been pursued in Van Diemen's Land, which, aided by the limited extent of the island, renders it easier for the Government to enforce its regulations, to preserve discipline, and to prevent escape from the road-parties, than in the other penal colony. For New South Wales is not only a penal, but a large and flourishing free colony. Though the free inhabitants are subjected, on account of dwelling there, to greater restraints than if they were residing in the mother country, and are obliged to submit to laws 'which, (according to Sir R. Bourke) nothing but the peculiar case of the colony could render tolerable to Englishmen,' yet they claim, and, on the whole, enjoy most of the privileges of free men in this country. Van Diemen's Land, on the contrary, was looked upon by Sir George Arthur as intended to be a vast gaol or penitentiary; and he contended that the free settlers who had become its willing inmates, must abide cheerfully by the rules and customs of the prison. He had been long assiduously and successfully endeavouring to render transportation a painful punishment, and to make the convict feel his position to be a disagreeable and degraded one. In proportion to the success of his efforts, the desire of the convict to escape has increased; and consequently, it has been necessary to increase the severity of the police regulations, which affect all classes; and the settlers are subjected to restraints, and to a surveillance which would not be endured in a free settlement. In the 39th section of the Quarter Sessions Act, 'Any person who shall in any manner shelter, protect or employ any absconded offender whatever, or shall provide any such offender with lodging, clothes, tobacco, money, wine or any spirituous liquor (whether knowing or suspecting him at the time to be an absconded offender or not), shall forfeit and pay a penalty or sum of not less than 5*s.* nor more than 20*l.*' The settlers are likewise completely at the mercy of the Government. They may be deprived on a sudden, at the will of the Government, of their assigned servants, whenever they are considered to be improper persons to have the charge of convicts, or when they contravene the police regulations; and as convicts are almost the only labourers which the settlers can obtain, the latter are entirely dependent upon the favour of the Government,

and are obliged implicitly to obey its commands. The severity of the general system pursued in Van Diemen's Land enables the Government therefore to enforce stricter discipline amongst the road-parties in that colony, than would be possible in New South Wales, without adopting a much harsher system with regard to these parties, or much severer police regulations with regard to the whole colony. The latter alternative seems hardly possible, and probably would not be endured in so wealthy and flourishing a community as that of New South Wales. . . .

Transportation, though chiefly dreaded as exile, undoubtedly is much more than exile; it is slavery as well; and the condition of the convict slave is frequently a very miserable one; but that condition is unknown, and cannot be made known; for the physical condition of a convict is generally better than that of an agricultural labourer; the former is in most cases better fed and better clothed than the latter; it is the restraint on freedom of action, the degradation of slavery, and the other moral evils, which chiefly constitute the pains of transportation, and of which no description can convey an adequate idea to that class in whom Transportation ought to inspire terror. It was proposed by Sir G. Arthur and others to attempt to diffuse a knowledge of the hapless lot of some offenders, by means of pamphlets, tracts, pictures of convicts in irons, and under other punishments, to be published by the Government; by descriptions to be given by the judges on the bench, and by similar means. But, to which will the criminal population give greater credit; to the authority of the Government and the judge, whose duty they will think it is, to exaggerate the evils of the punishment, or to those other sources of information, to which reference has been already made? And what description can a judge, or any other human being, give to an offender of his future fate as a convict? Who can tell what that lot may be? A criminal sentenced to transportation may be sent to New South Wales, or to Van Diemen's Land, or to Bermuda, or even to Norfolk Island;¹ in each colony a different fate would await him; his chance of enduring pain would be different. In New South Wales, or even under the severer system of Van Diemen's Land, he might be a domestic servant, well fed, well clothed, and well treated by a kind and indulgent master; he might be fortunate in obtaining a ticket of leave, or a conditional pardon, and finish his career by accumulating considerable wealth. Or he may be the wretched prædial slave of some harsh master, compelled by the lash to work, until driven to desperation, he takes to the bush, and is shot down like a beast of prey; or for some small offence is sent to work in chains, or to a penal settlement, where having suffered till he can

¹ Norfolk Island, one of three small islands with a total area of only 15 square miles, lies nearly 1,000 miles E.N.E. of Sydney. It was occupied as a penal settlement in 1788, abandoned in 1814, and reoccupied ten years later.

endure no longer, he commits murder in order that he may die. Between these extremes of comfort and misery, there are innumerable gradations of good and evil, in which the lot of a convict may be cast. But even if all this were known to the evil-disposed, as well known, as it is to all, who have perused the Evidence taken before Your Committee, the uncertainty of the punishment would destroy its effect, and prevent the suffering, which in many instances is inflicted, from producing apprehension. For it should be carefully borne in mind, that punishment is meant for those persons, who are inclined to evil, and its effects are to be estimated with regard to them alone. Now, the mind of a person disposed to commit a crime is precisely that of a gambler; he dwells with satisfaction on every favourable chance, overlooks every adverse one, and believes that that event will happen, which is most in accordance with his wishes. He hopes, that, if he commit a crime, he will escape detection; that, if detected, he will escape conviction; that, if convicted, he will be pardoned or get off with a few years in the hulks or Penitentiary; that, if transported, he will be sent to New South Wales; that, if sent to New South Wales, he will be as well off, as are some of his acquaintances, and make a fortune. It is by diminishing the number of chances in the criminal's favour, not by increasing the amount of contingent evil; in other words, it is far more by the certainty, than by the severity of punishment, that apprehension is produced, and thus Transportation sins against the first and acknowledged principles of penal legislation. . . .

In old communities, where there is a comparative want of employment, and profits are low, the amount of crime is not a perfectly sure test of the moral state of society, as the general uneasiness of the population gives birth to innumerable offences against property; but in those new communities, where there is a pressing demand for labour, and great facilities for acquiring wealth, crimes so numerous and so atrocious as those perpetrated in New South Wales and Van Diemen's Land, truly indicate the depth of their moral depravity. It is difficult, indeed, to form an adequate conception of the frightful degree of crime, which the above tables express; suffice it to say, that they show that, in proportion to the respective population of the two countries, the number of convictions for highway robbery (including bushranging) in New South Wales, exceeds the total number of convictions for all offences in England; that rapes, murders, and attempts at murders are as common in the former, as petty larcenies in the latter country. In short, in order to give an idea of the amount of crime in New South Wales, let it be supposed that the 17,000 offenders, who last year were tried and convicted in this country for various offences, before the several courts of assize and quarter sessions, had all of them been condemned for capital crimes; that 7,000 of them had been executed, and the remainder transported for

life; that in addition, 120,000 other offenders had been convicted of the minor offences of forgery, sheep-stealing and the like, then in proportion to their respective populations, the state of crime and punishment in England and her Australian colonies would have been precisely the same.

The only other means of supplying Australia with labour is by free emigration, and Your Committee are rejoiced to find that the Government have taken active steps to encourage it; and that, both this year and last, a considerable number of emigrants have been conveyed there, the expenses of whose passage have been defrayed out of the funds arising from the sales of waste lands in those colonies. This mode of encouraging emigration appears to Your Committee to be founded upon the soundest principles, to be equally beneficial to a mother country and to a colony, and to be especially beneficial to the Australian colonies, by infusing into them a better description of population, and thus, it is to be hoped, improving the moral state of those communities: it should be remarked, that every witness acquainted with the subject, who was examined before Your Committee, was strongly impressed with this opinion, and they unanimously stated that one of the greatest benefits that had ever been conferred by the Government on New South Wales, was the adoption of the Regulations of 1831, with regard to the sales of waste lands, and the disposal of the proceeds of those sales in emigration. Your Committee, however, must remark that the continuance of Transportation to the Australian colonies would be inconsistent with the policy of encouraging emigration there, for Transportation has a tendency to counteract the moral benefits of emigration, while, on the other hand, emigration tends to deprive Transportation of its terrors. . . .

Your Committee having in the preceding pages of their Report, discussed the nature and effects of Transportation, and what alterations can be made in the existing system, now consider that they have submitted the most unquestionable proofs that the two main characteristics of Transportation, as a punishment, are inefficiency in deterring from crime, and remarkable efficiency, not in reforming, but in still further corrupting those who undergo the punishment; that these qualities of inefficiency for good and efficiency for evil, are inherent in the system, which therefore is not susceptible of any satisfactory improvement; and lastly, that there belongs to the system, extrinsically from its strange character as a punishment, the yet more curious and monstrous evil of calling into existence, and continually extending societies, or the germs of nations most thoroughly depraved, as respects both the character and degree of their vicious propensities. Your Committee, therefore, are of opinion, that the present system of Transportation should be abolished. . . .

Without entering into any further details, Your Committee will now conclude their Report with the following Resolutions, to which

they have agreed, and which contain their general views as to the description of punishment which they recommend to be substituted for Transportation:—

1. That Transportation to New South Wales, and to the settled districts of Van Diemen's Land, should be discontinued as soon as practicable.

2. That crimes now punishable by Transportation should in future be punished by confinement with hard labour, at home or abroad, for periods varying from two to fifteen years.

3. That for the purpose of effectually maintaining discipline and subordination among the convicts sentenced to confinement abroad, of promoting the legitimate ends for which punishment is inflicted, and also of preventing a recurrence of those social evils which have been found by experience to result from Transportation as hitherto conducted, the penitentiaries or houses of confinement that may be established abroad, shall (so far as possible) be strictly limited to those places wherein there are at present no free settlers, and wherein effectual security can be taken against the future resort of such settlers.

4. That rules should be established by which the existing practice of abridging the periods of punishment of convicts in consequence of their good conduct, may be brought under stricter regulation, and rendered less vague and arbitrary.

5. That on account of the difficulty which a convict finds in this country in procuring the means of honest livelihood after the expiration of his sentence, and on account of the temptations to which he is thereby exposed, it would be advantageous to establish a plan by which a convict might receive encouragement to leave the country with the prospect of supporting himself by regular industry, and ultimately regaining the place in society which he had forfeited by crime. That if such encouragement were limited to convicts who should have conducted themselves uniformly well during their confinement, it might at the same time operate as an encouragement to good behaviour during confinement, and might considerably diminish the prejudice which must to a certain degree attach to any person known to have been convicted of a serious offence.

6. That the convicts who have been punished abroad should be compelled to leave the settlement in which they have been punished within a limited period after the expiration of their sentences, and that means should be afforded them by the Government for this purpose.

3 August 1838.

RESOLUTIONS OF LEGISLATIVE COUNCIL OF NEW SOUTH WALES (July 17, 1838) [EXTRACTS]

(*P.P.*, 1839, xxxiv.)

1. Resolved, That this Council concurs in the opinion expressed by the numerous and respectable body of colonists, who have signed the memorial to his Excellency the Governor, that the character of this colony, in as far as the social and moral condition of its inhabitants is concerned, has unjustly suffered by the misrepresentations put forth in certain recent publications in the mother country, and especially in portions of the evidence taken before a Committee of the House of Commons. . . .

3. Resolved, That being satisfied of this fact, and deeply impressed with the belief that it will also be brought home to the conviction of the British nation and Parliament, in the further progress of the inquiry before the Committee of the House of Commons now sitting, the Council is reluctant to enter upon an investigation, which, to attain the objects sought by the memorialists, must naturally be inquisitorial in its character; more especially when it is probable that the great questions which materially affect the interests of this colony will be settled in England before the results of such an investigation could be received there.

4. Resolved, That in the opinion of this Council, the numerous free emigrants of character and capital, including many officers of the army and navy, and East India Company's service, who have settled in the colony with their families, together with a rising generation of native-born subjects, constitute a body of colonists, who, in the exercise of the social and moral relations of life, are not inferior to the inhabitants of any other dependency of the British Crown, and are sufficient to impress a character of respectability upon the colony at large.

5. Resolved, That in the opinion of this Council, the rapid and increasing advance of this colony, in the short space of fifty years from its first establishment, in rural, commercial, and financial prosperity, proves indisputably the activity, the enterprise, and industry of the colonists, and is wholly incompatible with the state of society represented to exist here.

7. Resolved, That in the opinion of this Council, if transportation and assignment have hitherto failed to produce all the good effects anticipated by their projectors, such failure may be traced to circumstances, many of which are no longer in existence, whilst others are in rapid progress of amendment. Amongst the most prominent causes of failure may be adduced the absence at the first establishment of the colony of adequate religious and moral instruction, and

the want of proper means of classification in the several gaols throughout the colony, as well as of a sufficient number of free emigrants properly qualified to become the assignees of convicts, and to be entrusted with their management and control.

8. Resolved, That in the opinion of this Council, the great extension which has latterly been afforded of moral and religious instruction, the classification which may in future be made in the numerous gaols now in progress of erection upon the most approved principles of inspection and separation, the more effectual punishment and classification of offenders in ironed gangs, according to their improved system of management, the numerous free emigrants now eligible as the assignees of convicts, and the accumulated experience of half a century, form a combination of circumstances which renders the colony better adapted at the present than at any former period to carry into effect the praiseworthy intentions of the first founders of the system of transportation and assignment, which had no less for its object reformation of character, than a just infliction of punishment.

9. Resolved, That in the opinion of this Council, no system of penal discipline or secondary punishment will be found at once so cheap, so effective, and so reformatory, as that of well regulated assignment, the good conduct of the convict and his continuance at labour being so obviously the interest of the assignee, whilst the partial solitude and privations incidental to a pastoral or agricultural life in the remote districts of the colony (which may be made the universal employment of convicts), by effectually breaking a connexion with companions and habits of vice, is better calculated than any other system to produce moral reformation, when accompanied by adequate religious instruction.

10. Resolved, That in the opinion of this Council, many men who previously to their conviction had been brought up in habits of idleness and vice, have acquired, by means of assignment, not only habits of industry and labour, but the knowledge of a remunerative employment, which, on becoming free, forms a strong inducement to continue in an honest course of life.

11. Resolved, That in the opinion of this Council, the sudden discontinuance of transportation and assignment, by depriving the colonists of convict labour, must necessarily curtail their means of purchasing Crown lands, and consequently the supply of funds for the purposes of immigration.

12. Resolved, That in the opinion of this Council, the produce of the labour of convicts, in assignment, is thus one of the principal, though indirect means, of bringing into the colony free persons; it is obvious therefore that the continuance of immigration in any extended form, must necessarily depend upon the continuance of the assignment of convicts.

LETTER FROM STANLEY TO PEEL [EXTRACTS]

*(Peel Papers : British Museum.)**Private.*

St. James's Sq.

Oct. 3, 1842.

MY DEAR PEEL,

... No one knows better than you do the difficulty attending the question of secondary Punishment; and the feeling of the present day is such as to render it almost impossible to make any satisfactory arrangement, while the necessity for an efficient system is increased by the almost entire abolition of Capital Punishment. Confinement in the Hulks is objected to, and on very good grounds¹; long periods of imprisonment in this Country entail a frightfully heavy expense, and when the Convict comes out he is again in the midst of all his old temptations, and with little prospect of obtaining honest employment. Transportation to New South Wales, which is capable of absorbing an indefinite amount of our Convict Population, and on the whole, I believe, with beneficial effect, is now prohibited²; nor would the Colony consent to its renewal, even, I think, if accompanied with Assignment—certainly not without. Assignment is prohibited even in Van Diemen's Land, to which Colony alone, with the exception of the experiment going on at Norfolk Island under very doubtful circumstances, we can now send any Convicts—and our annual number of *Male* Convicts under sentence of transportation reaches Four Thousand! Meantime the Colonists ask for Assignment, if theirs is to be a Convict Colony, because they derive a direct benefit from it, and just on the same principle Sir T. Mitchell, a most zealous and useful Public Servant,³ deploras the loss of Convict Gangs, to carry on the Public Works, which are impeded by the scarcity and dearness of free labour. But although employment on the roads may be a useful ingredient in the *penal* part of Convict discipline, it does little more. There is nothing of a reformatory principle about it. It is severe labour, under close restraint, and enforced, necessarily, by great severity; but in a large Colony the extent over which this description of work is spread, renders it almost impossible to make any provision for the classification, still less for the instruction and moral training of the Prisoners. It is very

¹ These 'hulks' were used to accommodate convicts working in the dockyards both in Britain itself and at Bermuda and Gibraltar. The main reason for their use was presumably the saving in expense as compared with the prisons which it would otherwise have been necessary to erect in these places.

² By an Order in Council of May 22, 1840, New South Wales was declared to be no longer a place to which offenders under sentence of transportation might be sent as from the 1st of August following.

³ On Sir T. L. Mitchell, see p. 229, note 1.

useful coupled with other degrees of punishment, to be carried on under the same authority; but I could not recommend it, except indeed on such a limited scale as it is carried on at Bermuda or at Gibraltar, as the permanent and only mode of disposing of your convicts, even if you could hope to find employment for your annual swarm. . . . The question is one beset with difficulties, and I have had frequent conversations with Graham upon it¹; and before winter we must come, as a Government, to the consideration and adoption of an extensive measure embracing the whole system of secondary punishment.

Believe me, etc.

(signed) STANLEY.

7

DESPATCH FROM STANLEY TO FRANKLIN

(November 25, 1842) [EXTRACTS]²

(*P.P.*, 1843, xlii.)

Such being the general principles by which Her Majesty's Government propose to be guided, I will next consider in their order, each of the five stages through which a convict will have to pass. For the sake of distinctiveness, they may be described as follows: 1. Detention at Norfolk Island. 2. The Probationary Gang. 3. The Probation Passes. 4. Tickets of Leave; and, 5. Pardons.

1st. Detention in Norfolk Island will be the invariable consequence of all sentences of transportation for life; and will also be applied to the more aggravated cases of convicts sentenced to any term not less than 15 years.* Four years will be the longest period, and two years the shortest period, for which any convict will be sentenced to detention at Norfolk Island. In each case the Secretary of State for the Home Department will, between these limits, indicate the length of time for which the convict is to be detained at that place. This statement is, however, applicable only to the cases of convicts transported direct from the United Kingdom. It will be left to the discretion of the Governors of New South Wales and of Van Diemen's Land respectively to transport convicts under similar colonial sentences, either to Norfolk Island, or to the penal settlement of Port Arthur in Van Diemen's Land, of which the regulations and discipline will be nearly similar.

Arrived at Norfolk Island, the convict will be employed at hard

¹ Sir James Graham, as Home Secretary, was the other minister who shared with Stanley the main responsibility for the management of the system of transportation.

² Sir John Franklin, the great Arctic explorer, was Lieutenant-Governor of Van Diemen's Land from 1837 to 1843: a dispute with his Colonial Secretary, Montagu (see above, p. 108, note 2), in which the Colonial Office upheld the latter, then led to his recall. Though a natural leader of men, and very popular with the colonists, Franklin can hardly be said to have made his mark as a Colonial Governor.

labour. No authority except that of the Queen herself will be competent to abridge the time of his detention there. On the other hand, the misconduct of the convict in Norfolk Island may have the effect of prolonging his detention there indefinitely, within the limits of the term of his original sentence.

But although even good conduct on the part of the convict cannot abridge the duration of this part of his sentence, yet any one who, by a course of blameless or meritorious behaviour at Norfolk Island, shall have established a claim to favourable consideration, will have the benefit of that claim in the future stages of his career.

Norfolk Island must be regarded exclusively as a place of confinement. No person must be permitted to dwell there except the convicts, the persons employed in the superintendence of them, the families of those persons, and the military. The commandant must be armed with summary power to remove all persons who are not either convicts undergoing their sentence, or military in charge over them, reporting of course, to the Governor of Van Diemen's Land for his sanction, every such proceeding. These powers must be imparted to the commandant by law, and for that purpose an enactment must be proposed to the Legislative Council of Van Diemen's Land.

I anticipate that the total number of convicts who will be annually sent from this country to Norfolk Island will not exceed 1,000, and that the total number of such convicts who will be ever resident there at any one time will not much exceed 3,000. Some addition may be made by convicts sent to Norfolk Island from New South Wales or Van Diemen's Land. The number will not probably be large. . . .

The second stage of punishment is that of the probation gangs. These gangs will be assembled in Van Diemen's Land. They will be composed first of convicts who have passed through the period of detention at Norfolk Island, and secondly of convicts sentenced to transportation for a less term than life, who may be indicated by the Secretary of State for the Home Department as proper to be placed in this class. The probation gangs will be employed in the service of the Government, and, with rare exceptions, in the unsettled districts of the colony. No convict placed in the probation gang will pass less than one or more than two years there, except in case of misconduct. Here, as in the case already mentioned, a contemporary record should be preserved of the good or the bad conduct of the convict. Of good conduct the reward would be earned in the ulterior stages of his punishment. His bad conduct would be followed by the penalty of detention for a proportionate period in the probation gang.

The probation gangs will be employed in hard labour. But the labour of all should not be equally hard. Every gang should be broken into two or three divisions, distinguished from each other by

such mitigations of toil or other petty indulgencies as may be compatible with the condition of criminals suffering the punishment of their offences. By transference of the men from one of these divisions to the other, an effective system of rewards and penalties might be established, of which the enjoyment or the terror would be immediate. This system appears to be already in operation in Van Diemen's Land, and the regulations generally, in which, of course, modifications may from time to time be made by the local authorities, seem well adapted to their object.

An officer hereafter to be more particularly mentioned, who would have the title of Comptroller of Convicts, will have the general superintendence of the probation gangs, and at his suggestion alone will, relaxations or indulgences be granted to any member of them.

My present estimate is, that provision ought to be made for placing the probation gangs in Van Diemen's Land on a footing which will admit of the maintenance and employment of a number of convicts at one time, amounting to 8,000. This large number of prisoners may be divided as at present, into gangs of from 250 to 300 men each. They must be hutted, or quartered in situations where they can undertake and execute in concert, works of public utility. With a view to co-operation in such works, and in order that they may live under one common superintendence and control, their settlements must be in the vicinity of each other; while, on the other hand, that vicinity must not be so close as to admit of easy communication between different gangs, or any concert between them to resist the authority under which they are placed.

In subordination to the comptroller there will be employed, for the superintendence of the probation gangs, first, religious teachers, being clergymen of the Established Church or Wesleyan methodists, or Roman-catholic priests. Every such teacher will be liable to immediate suspension from office by the comptroller, subject to the Governor's ultimate decision. . . .

Weekly returns will be made by every overseer and by the religious teacher to the comptroller, in which report a statement is to be comprised of the good or bad conduct of every member of each of the probation gangs. From such reports will be compiled periodically some account of the character of each man, reduced to some scale of numerical notation, from which may at any time be drawn an estimate of the claims of each on the indulgence of the Crown, or of the just liability of each to an enhanced rigour of punishment.

After a convict shall have passed through the probation gang, he will next proceed to the third stage of punishment, and become the holder of a probation pass. But no convict may enter on this stage except on two conditions. Of these, the first is the obtaining from the comptroller of convicts a certificate of general good conduct, to be drawn from the records already mentioned; and secondly, the

having fully served in the probation gang during the whole of the period for which the convict had been placed there.

The essential distinction between the third stage and those which preceded it will be that the holder of a probation pass may, with the consent of the Government, engage in any private service for wages, such wages to be paid and accounted for as subsequently mentioned.

The contract for private service is to be void unless made with the Governor's sanction, either previous or subsequent, and is, by the terms of it, to be terminable at the Governor's pleasure.

The holders of probation passes are to be divided into three classes. The difference between the members of the three classes will consist in the different rules under which they will be placed regarding their hiring and wages. Those who may be in the first or lowest class must obtain the previous consent of the Governor to any contract of service. Those who are in the second or third classes may engage in any service without such previous sanction, provided that the engagement be immediately reported to the Governor for his subsequent sanction. Again the members of the first class will receive from their employers one-half only of their wages; the members of the second class two-thirds only of their wages; but the members of the third class the whole of what they may so earn. The wages kept back from the members of first and second classes must be paid by the employer into the savings bank. For the expenditure of the wages actually paid to him, the holder of the probation pass, of whatever class, must account when required by the comptroller of convicts, or by any person acting under his authority.

The holders of probation passes are to be arranged in the three classes already mentioned by the Governor, at his discretion. He will have regard to length of service, to good or bad conduct, and to every other circumstance which should influence his decision; and he may, if he shall see cause, degrade the holder of such a pass from a higher to a lower class.

In case of gross misconduct, the Governor may resume the probation pass, and send back the convict to serve in the probation gang. But whenever he shall have recourse to any such exercise of authority, it will be his duty to make a special report to the Secretary of State, for his information, and for his sanction of the proceedings.

The proportion of the wages earned by the holder of a probation pass, and paid by the employer into the savings bank, is there to be detained until the convict shall have been transferred into the class of holders of tickets of leave, when, and not before, it is to be paid over to the convict. But in the event of a convict forfeiting his probation pass by misconduct, the whole amount of the deposit is to be forfeited to the Queen. It will in each such case remain to be determined how far any part of the forfeiture may be subsequently remitted in favour of the convict himself in case of amendment, or

in favour of his family if the convict should die before any remission of the forfeiture.

If the holder of a probation pass should be unable to obtain employment in any private service, he must return to the service of the Government, to be employed without wages, receiving merely the ordinary rations of food and clothing. Such persons will not be worked in company with convicts in the probation gangs, nor will they be continued in the service of the Government after they can obtain an eligible private service.

Holders of probation passes thus lapsing into the service of the Government, must not be so employed, except in one or the other of the two following modes; that is, either, first, in the making and repair of roads, or secondly, as members of jobbing parties hired out by the Government for the performance, under the direction of the comptroller of convicts, of agricultural labour for the behoof of some private person. Such jobbing parties for the performance of rural works by contract are to be composed exclusively of the holders of probation passes. The contracts are to be made by the comptroller, and all the earnings of the jobbing parties so employed are to be paid to the Commissariat chest, to the credit of the Lords of the Treasury.

The prohibition of employing the holders of probation passes in the service of the Government for hire, or of so employing them in any other mode of labour than one or the other of the two modes already indicated, must be considered as a peremptory and inflexible rule.

The holders of probation passes will be incompetent to maintain any suit or action against any person whatever. But at the instance of a person so situated the comptroller of convicts will sue his employer, if necessary, for the amount of any wages earned by the convict and unpaid. The holder of a probation pass will, in like manner, not be liable to any civil suit or action by any person. If the pass-holder should be indebted to his employer in any sum of money, the employer may, with the consent of the comptroller of convicts, but not otherwise, pay himself the amount of that debt by withholding from the convict any proportion of his earnings which, according to the preceding regulations, may be payable to the convict himself.

The holders of probation passes are all to be placed under the special superintendence of some magistrate residing in the district within which such pass-holders may be employed. Every pass-holder is to be inspected by such magistrate once at least in each month, and the magistrate is to make monthly reports to the comptroller of convicts of the result of every such inspection.

There is no absolute limit, saving only the continuance of the sentence, which must necessarily terminate the continuance of a convict in the class of holders of probation passes. The transition

from that class into the class of holders of tickets of leave, is always to be a matter of grace and favour, and never a matter of strict right.

The fourth stage through which the convict must pass before obtaining a pardon is that of the holders of tickets of leave. The essential condition of this class is, that they possess what may be termed a 'probationary and revocable pardon,' valid in the colony in which it is granted, but of no avail elsewhere.

No convict can obtain a ticket of leave before half of the term of the original sentence shall have expired. In the case of persons sentenced for life, that indefinite term shall, for the purpose of this computation, be counted as 24 years.

Further, no person may be transferred from the class of probation pass-holders into the class of ticket-of-leave holders, until he shall have held the probation pass for a term equal to the difference between half the sentence and the shortest period at which, under that sentence, the convict might have arrived at the stage of a probation pass-holder. The rule thus stated with a view to precision, will at first sight appear obscure. An illustration will dispel that obscurity: Thus, suppose the case of a convict for life, or, as has already been explained, for 24 years; half of his sentence is 12 years; the shortest period at which under his sentence such a convict could have reached the stage of a probation pass-holder, would be six years, for he must have passed four at Norfolk Island, and two in the probation gang. Deduct those six years from the 12 years already mentioned, and there will remain six years; during which the convict must, according to the rule already given, hold his probation pass. More briefly, it may be stated thus, namely, that one-half of the term of the sentence must be passed in one or other of the three first stages of punishment. But supposing that by misconduct the length of the first or of the second stage may have been increased, no decrease will on that account be permitted in the third stage; on the contrary, in the case supposed the whole term of punishment in the three first classes would endure for a greater period than one-half of the original sentence.

The fifth and last stage which a convict can reach during the continuance of the term of his sentence is, that of a pardon, conditional or absolute. It is almost superfluous to say that no one will be able to claim a pardon of right, but that it must in every instance be an act of pure grace and favour. . . .

DESPATCH FROM STANLEY TO WILMOT

(August 31, 1844) [EXTRACTS]¹*(P.P., 1845, xxxvii.)*

The extraordinary and unforeseen depression of all the springs of industry, and of all the resources of profitable employment in Van Diemen's Land, has disturbed the basis and the results of the calculations on which I proceeded in my Despatch of the 25th November, 1842. I then assumed (on what appeared adequate authority and sufficient grounds) the continued existence of such a demand for labour in the colony, either by the public at large or by individuals as would provide for the profitable occupation of such of the convicts, as according to the system described in that Despatch, would from time to time be seeking wages. Experience having proved that this resource could not be relied on to such an extent as I had been led to suppose, I cannot but approve and sanction the deviation from my instructions reported in your Despatch of the 8th March, 1844.² It appears to have been a measure not of choice but of necessity.

It is possible (I trust not improbable) that the recent depression of the resources of the colonists may pass away, and that the system of employing convicts indicated in my Despatch of the 25th November, 1842, may be successfully and habitually reduced to practice. But the necessity of contemplating and of providing for the opposite contingency, is no longer doubtful. To the plan which you propose, and to the principle on which that plan proceeds, I entertain so decided an objection that I must distinctly oppose and prohibit the adoption of it, unless indeed you should be driven to it by some evident and irresistible necessity. . . .

To whatever extent the free settlers are willing and able to employ the convicts as servants, in the later stages of their punishment, to that extent it is an arrangement of mutual advantage. The Government are relieved from an expensive burthen, and the colonists are supplied with cheap and effective labour.

¹ Sir J. E. Eardley-Wilmot was Lieutenant-Governor of Van Diemen's Land from 1843 to 1846. He had been a member of the House of Commons for some years, but he was hardly fitted for the arduous duties of Governor of a penal colony, and was recalled by Gladstone in 1846 as a result of alarming reports that had reached the Colonial Office as to the state of the convicts of Van Diemen's Land. Imputations had also been made against his private character, and though these were satisfactorily refuted, the double blow was too heavy for the unfortunate Wilmot, who died in 1847.

² The despatch of March 8 reported that, in view of the increasing number of passholders on the hands of the Government and their dissatisfaction at their inability to find private employment, the regulation forbidding them to be employed in the public service had been relaxed.

But when the demand for that labour ceases, the colonists, whether collectively or individually, have no claim to be supplied with convict labour, either gratuitously, or on very low terms, unless the interests of the British Treasury admit or require it. If the colonists cannot afford more than 4,000*l.* per annum in return for the great benefit of having their public works executed at the expense of this country, it is of course quite reasonable that they should refuse to give more. But on the other hand it is not less reasonable that the British Government should decline to enter into any such arrangement, if any other method of more advantageously employing such labour can be found. The practice of regarding the colony as having some indefinite claim on the Government for indemnity, and the practice of regarding convict labour as a commodity not fluctuating in value, like all other vendible things, but capable of being estimated once for all at a fixed and low price, are alike reprehensible. Such admissions once made there is absolutely no limit to the consequent demands on the British Treasury, or at least, there is no such limit, so long as any ingenuity can suggest public works to be undertaken by the Treasury for the convenience and profit of the colony. If the free inhabitants cannot purchase the labour we have to sell, at a price which it is worth our while to accept, it remains for us to consider whether some other advantageous employment for it cannot be found.

I find in your Despatches no reference to that question—a silence which I regret the more, as I am quite aware how inevitably great must be my liability to error at this distance from the scene of action; yet I cannot forget that nearly two years have elapsed since, in my Despatch of the 25th November, 1842, I indicated other modes of employing convicts in Van Diemen's Land than that of hiring them out as servants, and that I am still without any proof, or even any suggestion, of the impracticability of those methods.

Food, shelter, clothing, implements of labour, the four great necessities of life, may all be produced to a great extent by the labour of the convicts, and for anything that I have yet heard, they may be produced to such an extent as to render them completely independent of the free colonists, so far as their mere subsistence is concerned. This is the first, the great, and the permanent resource for employing the convicts, and I must again urge on you the absolute necessity of availing yourself of it to the utmost possible extent in aid of the British Treasury.

In the next place there are many public works required for the occupation of the convicts themselves. Such, for example, are gaols, school-houses, hospitals, and the like. This is also a profitable employment, that is, it is profitable in the result, as anticipating and tending to diminish future expenditure.

There are also constant and varying demands for labour, by the

Ordnance, by the Naval and Military Departments, by the Customs and the Post-office; convicts employed in such works exonerate the Treasury from charges which must otherwise be borne by the revenues of this kingdom. But all these resources being exhausted, another of great importance remains. It is that of preparing hitherto unsettled land for settlement and sale.

It is gratifying to learn from your own reports that the island possesses extraordinary natural advantages, and contains many districts which might advantageously be opened for future settlement. Now assume that such a district was carefully surveyed, that high roads connecting it with the more settled country were traced out—that cross roads traversing it in convenient directions were planned—that farms or holdings of a desirable extent were projected, possibly even improved by means of drainage or irrigation, and that schemes were formed for improving the natural communications by water of such a district.

The general design being thus formed, I am aware of no insuperable impediment to the employment of all convict labour for which there might be no other effective demand, in preparing such a district for settlement, by opening the main and the cross roads, by fencing off the different farms from each other, by erecting some rude huts or log-houses on each, and perhaps by breaking up some small portion of the soil on each for cultivation. By such a process territories now lying waste and unsaleable might be made to acquire such an exchangeable value, as at no remote period to return to the Treasury the expense of maintaining the labourers engaged in any such process.

If the Australian Waste Land Sale Act would prevent such an application of the property of the Crown to indemnify the public against the charge of the convict establishments, it is an unforeseen consequence of that Act which Parliament would, I doubt not, willingly obviate by amending it. I do not conceal from myself that there are grave difficulties which might oppose the adoption of this last-mentioned mode of disposing of redundant convict labour. But the same thing is true of every possible proposal, and it is especially true of the proposal which you have made. If the colonists are taught to believe that the Treasury are entirely dependent on them for the employment of the convicts, it is needless, as it might be invidious, to point out the results which must follow. It is therefore necessary that we should assert and prove that the British Government is exempt from any such dependence. When that fact is clearly understood, then, and not till then, the real saleable value of the labour of the convicts will be correctly appreciated.

For these reasons I cannot consent to depart from my instructions of the 25th November, 1842. Invincible necessity may occasion hereafter, as it has occasioned already, the practical suspension of

some parts of them. But subject to the modifications or explanations already given, I see no reason why those instructions should not afford the general rule for your guidance. The proposal that the British Government should pay half the expense of administering justice in Van Diemen's Land, is made on calculations so vague, and on grounds so inadmissible, that it is impossible for Her Majesty's Government to accede to the suggestion.

Suppose that every convict in the colony could at once be removed from it, I do not see any proof that even, in such an event, a smaller number of judges and judicial officers would be necessary than at present, or that any retrenchment could be made in their emoluments. There is no proof before me that the contingent and miscellaneous expenses of the existing courts would be materially retrenched by such a change. It would not, I think, be very difficult to show that in many directions those expenses would be materially enhanced by it. But even on the assumption that one-half, or any other assignable proportion of the expense of administering justice in Van Diemen's Land could be traced to the presence of the convicts there, I should entirely dissent from the inference that to this extent the British Treasury is liable for that expense. It is impossible to conduct public affairs on such principles and distinctions as these. The convicts in Van Diemen's Land are the persons, with a view to the punishment and reformation of whom the country was first occupied. It is to their labour, concurring with the capital employed both by the British Government and by individuals, that we must ascribe the creation of whatever wealth exists in the Colony; they constitute, in fact, its handicraft population. If they were withdrawn other labourers must be imported in substitution for them, or the existing fixed capital of the colony must become to a great extent unproductive. It is manifestly impossible to adjust by any such calculation as that which you have transmitted to me, or by any other calculation, the relative liabilities of the British and the Colonial Treasuries in respect of this, or of any other isolated branch of the public service. But when it is borne in mind that Great Britain defrays the whole expense of maintaining the unemployed convicts, with all the charges of the naval and military defence of the colonists, and that capital and cheap labour are thus continually poured into the colony at the charge of this kingdom, it will, I think, be evident, that the British Treasury sustain a full and reasonable share of the public expenditure.

If the principle were once admitted that the expense of the various local establishments must be analyzed, in order to distinguish what part of that expense is referable to the convicts, and in order to charge that part against the British Treasury, there would be an end to every prospect of maintaining a just economy in the public expenditure. Every day's experience shows that local liability for local

charges is the only valid security against the waste of the public resources.¹

I have, &c.

(signed) STANLEY.

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LETTER FROM STEPHEN TO PHILLIPPS

(May 13, 1846) [EXTRACT]²

(*P.P.*, 1847, xlviii.)

The official reports which have been received in this department from Van Diemen's Land, both during Lord Stanley's tenure of office and since Mr. Gladstone took charge of the seals, with respect to the system of Convict Discipline pursued in that colony, have supplied with considerable abundance the statistical facts connected with its internal detail, but have been uniformly and singularly meagre with regard to its moral aspect and operation. They have touched this portion of the subject only in rare and slight allusions. Those allusions have not, indeed, imported that there was anything to deplore or anything to supply in the system as it stands. They have spoken of it as marked by uniform prosperity and success, yet in terms so little penetrating and characteristic, as to suggest the possibility of some latent and very serious error. The statistics of the Convict Discipline, together with adequate illustrations, might have conveyed its real character; but unexplained in the most essential respects, they have been insufficient for that purpose.

In the meantime there has been for a length of time unanimous accordance in the unofficial accounts which have reached this department on the same subject, both as among themselves, and likewise with public rumour; and they have been to an effect directly the opposite of that of the official reports. They have described the system as lifeless and inert for the purposes of good, the redundancy of moral evil as overflowing upon the colony at large in the increase of

¹ The real opposition to the transference of part of the colonial judicial expenditure to the shoulders of the Mother Country came not from the Colonial Office but from the Treasury. At last in Feb. 1846, when the condition of Van Diemen's Land had become still worse, the Treasury gave way and agreed to assume two-thirds of this expenditure, in return for having the land fund—the amount of which was at the time insignificant—put at their disposal.

² S. M. Phillipps was Under-Secretary (Permanent) for Home Affairs. The usual procedure in matters of policy which affected two departments was to embody the results of discussions between the heads of the departments and their respective subordinates in an official letter from one department to the other; and in this case doubtless the suspension of transportation to Van Diemen's Land and the various expedients suggested in parts of the letter not here printed—employment on public works in various colonies, reopening of New South Wales for convicts, perseverance with a projected new penal colony in North Australia—had been the result of much discussion.

crime, and sensibly affecting the general security. The probation parties, intended to be the scene of reformatory influences, as nothing else than schools of advanced depravity, in which the only effective instruction to be acquired, was instruction in the way of effacing every remaining trace of virtuous sentiment or habit. . . . In short, Mr. Secretary Gladstone apprehends that while much exaggeration may possibly prevail, yet certainly such a state of things subsists among the convict population of Van Diemen's Land, and particularly in the probation parties which form the basis of the whole system, as to make it the imperative duty of Her Majesty's Government to use immediate and vigorous efforts for its effectual reform. . . . Adverting to the immense mass of convicts now accumulated in Van Diemen's Land, and to the difficulty of this task, Mr. Gladstone is desirous to secure to those who are to be charged with it, the means of an undivided application of their energies to its execution. But it is impossible that there can be any such application of them, if they are to be required, as heretofore, to receive and dispose of new arrivals of convicts from the United Kingdom at the rate of between 4000 and 5000 a year. To pour these fresh accessions into probation parties of the present faulty organization, would likewise defeat all reasonable hope of their reformation. It will be essential, therefore, to a proper course of proceeding, that the stream of transportation should for the time, and in great part at least, be arrested; that if it is too much to hope for an entire cessation during the period of eighteen months or two years from the present time, it is nevertheless necessary that no greater number of convicts should be sent to Van Diemen's Land during that period than can be received in such probation parties as shall have been in succession adequately reorganized. Less than this would be injustice alike to the unhappy persons themselves, for whose care the Government is deeply responsible, and to the colonists of Van Diemen's Land, who regard, and with reason, the system of transportation in the form in which it is now administered, as entailing grievances on themselves and on their adopted country.

DESPATCH FROM GREY TO DENISON
[EXTRACTS]¹

(*P.P.*, 1847-8, lii.)

Downing-street, April 27, 1848.

SIR,

You are aware that the policy proposed by Her Majesty's Government was that of substituting for the system of transportation formerly in force, a punishment which should consist in the first instance of separate imprisonment, for periods varying from six to eighteen months, followed by penal labour on public works, and by ultimate removal to the colonies. As regards the necessity of altering the mode of carrying into effect the sentence of transportation which was in use up to 1846, your own Despatches, and that of Mr. Latrobe,² afford all the evidence that can be required, and prove conclusively that the failure of this system cannot justly be attributed to the faults of the individuals who were charged with the duty of carrying it into execution, but must be ascribed to inherent defects in the system itself, and especially to the difficulties in working it, arising from the great distance of Van Diemen's Land from the seat of Government. The experience of another year is also in favour of the methods of punishment which we have proposed to employ; the results of the system of separate imprisonment for moderate periods are highly satisfactory, and the efforts that for several years have been made to improve the discipline of the convicts employed on the public-works at Bermuda and Gibraltar, notwithstanding all the disadvantages under which they have taken place, have been attended with a degree of success sufficient to justify the expectation that employment of this description may become a very useful part of the punishment of the majority of offenders. Already under the system which has been adopted at Gibraltar and Bermuda, notwithstanding the want of proper buildings, and the difficulty, under the disadvantage of insufficient space, of applying adequate means of moral instruction, the good order and the industry of the convicts have become very

¹ Sir William Thomas Denison was Lieutenant-Governor of Van Diemen's Land from 1847 to 1854, and afterwards successively Governor of New South Wales (1854-61) and of Madras (1861-6). He was a Major in the Royal Engineers, and had had some experience of convicts while in charge of the works at various Admiralty dockyards. Though he did not much care for colonial society and was inclined to disparage the system of responsible government, he was a most able and zealous administrator and undoubtedly had at heart what he conceived to be the interests of the colonies he governed.

² Charles Joseph Latrobe was Superintendent of Port Phillip from 1839 until the separation of Victoria from New South Wales: from 1851 to 1854 he was Lieutenant-Governor of Victoria. He was appointed in 1846 to take temporary charge of Van Diemen's Land after the supersession of Wilmot. He was a man of high character and no little ability, in whom the colonists and his official superiors had equal confidence.

remarkable, and have been shown by the fact that the value of the labour they have performed has exceeded the cost of their maintenance. It is also stated to me by the very zealous and pious chaplain of the convict establishment at Gibraltar, that those convicts who previously to being sent there have undergone separate imprisonment, even for only a short time, and under less perfect arrangements than those adopted at Pentonville, have given evidence by their conduct, that the effects of this discipline upon their minds have been not only salutary at the time, but generally lasting; and that the previous preparation they have thus gone through has in many cases rendered their subsequent employment on the works at Gibraltar a period of progressive improvement; thus giving fair ground for the hope that when all the offenders employed on public-works shall consist of those who have undergone a preliminary period of separate confinement, the results may be still more satisfactory. . . .

Of the advantage arising from the ultimate removal of convicts to the colonies, with a view to their once more becoming useful members of society, very gratifying evidence is afforded by the reports which I have already mentioned as having been received of the conduct of the exiles sent to Port Phillip. Thus far the results of experience are highly favourable to the mode of carrying into effect the sentence of transportation which had been contemplated; on the other hand, it appears from the evidence collected last year by the Committee of the House of Lords,¹ that the deterring effect of the sentence of transportation, would, in the opinion of most of those who had been engaged in the administration of justice, be considerably impaired should it come to be generally understood that this punishment was not in future to involve the actual removal of the offender from his native country. There also seem to be good grounds for believing that though in general the exiles who have been sent to Australia² have conducted themselves well, and a limited class might still be permitted to go there on the same terms, there would nevertheless be considerable advantage, with regard to the general body of convicts, in adopting means to prevent them from being on their arrival in Australia at once completely relieved from all control on the part of the Government, and from being placed entirely on the same footing with free emigrants from the moment of their landing.

¹ A Committee of the House of Lords 'on the Execution of the Criminal Law' had been appointed in 1847 to consider the transportation policy of the Government. Its moving spirit was Lord Brougham, who was no friend to the Government; but the weight of evidence, and in particular the opinions of the judges, were so strongly against the abolition of transportation that they could hardly be disregarded.

² The term 'exiles' was first applied to the convicts who had passed through the new penitentiary of Pentonville, established in 1842. It was thought inadvisable to send these men out to Van Diemen's Land, and recourse was had to Port Phillip, where the demand for shepherds was great. By this time several hundreds had been absorbed. As they were not under special surveillance, the sending of the men was not contrary to the Order in Council of 1840 abolishing transportation to New South Wales.

Her Majesty's Government accordingly propose that in future, with regard to all convicts, except those whose age or health may require different treatment, or whose sentences shall for some special reasons have been commuted for imprisonment, the general rule should be not to allow of their being at large in Great Britain or Ireland, during the period for which they have been sentenced to transportation, but that after having gone through the two first stages of punishment already adverted to, they should be removed, as holders of tickets of leave, to Van Diemen's Land. It is intended that this removal should, as a general rule, with the exception hereafter mentioned, take place at the expiration of half the original sentences, the period of penal labour, however, being liable to extension in case of serious misconduct, and to abridgment as a reward for industry and good conduct. In the case of convicts sentenced to not more than seven years' transportation, and whose conduct in prison shall have been satisfactory, the second stage of punishment might be omitted or materially shortened, and their removal with tickets of leave might take place either immediately or very shortly after the expiration of their separate confinement.

With regard to all convicts having only tickets of leave, the Lieutenant-Governor will have the power of assigning to each the district in which he is to live, and in doing so, care should be taken to disperse them as much as possible in different parts of the colony, according to the demand for their labour, and at a distance from the temptations of the towns. It is proposed, however, that it should be one of the conditions on which alone convicts should be removed thus early from the two first and more severe stages of punishment, in order to be placed in the comparatively advantageous position of holders of tickets of leave in Van Diemen's Land, that they should agree to repay from the earnings of their labour in the colony, the cost of their conveyance to it. The existing law invests the colonial authorities with great power over the holders of tickets of leave which might properly be used to enforce the performance of these agreements; and as one means of doing so, the grant of a conditional pardon might, in all cases in which the repayment was practicable, be postponed until such repayment should have been made, subject of course to such other regulations as may be considered necessary with reference to the length of the sentence and the conduct of the convicts. In the case of men sentenced only for seven years, and whose industry and general conduct had been satisfactory, it would probably be expedient that the conditional pardon should be granted immediately on the repayment by them of the cost of their removal, and in all cases the regular payments of the instalments for this purpose would be regarded as strong evidence of the industry and good conduct which ought to be the ground of the recommendation for a conditional pardon.

The following advantages may be expected to arise from this arrangement. The convict would not be exposed to all the temptations to which he would be liable if he were suddenly relieved from the strict discipline to which he had been subject and made entirely his own master in a colony where his labour would earn far higher wages than he could have obtained at home. Your observations upon the tendency of an excessive demand for labour, to exercise a pernicious influence on the character and conduct of the labourers, are no less just than important, and apply with peculiar force to those who have been convicts. The effect of requiring the convict, when raised to the condition of the holder of a ticket of leave in Van Diemen's Land, to repay the full cost of his removal to that colony, would be to stimulate his industry, and guard him against the corrupting influence of a sudden increase of his means, beyond what might be required for his maintenance in reasonable comfort,—thus, in a great degree, adopting your views as to the convicts being sent out as passholders.

Another important recommendation of the method of carrying into effect the sentence of transportation which I have described is, that it will relieve Van Diemen's Land from the difficulties which you justly anticipate, as the necessary consequence of suddenly withdrawing from it the large supply of labour it has hitherto had in the convicts who have been sent there.

Those who will in future be sent there will have received an industrial training, which will I trust render them of very great value to the colony. I am far from thinking that the pecuniary benefit which the colony will thus receive could be put in competition with the frightful moral evils which would result from the continuance of transportation as hitherto conducted. But, on the other hand, it must not be overlooked that the severe pecuniary difficulties to which the colony must be exposed if it should cease to receive in any form a supply of convict labour, would not be favourable to its moral and social advancement; and also that so far as present experience affords the means of forming a judgment upon the subject, there appear to be reasonable grounds for hoping that sending out convicts who have previously undergone a reformatory punishment of the kind proposed, to be dispersed over the colony under the contemplated regulations, will not be the cause of the moral evils which have arisen from the system lately in force.

Her Majesty's Government, however, would not consider themselves justified in trusting solely to the effect of any improvement it may be in their power to introduce into the system under which convicts have hitherto been sent to the colony. They consider it absolutely necessary that the addition to be made to its population from the mother-country should not consist entirely, or even principally, of those who have been tainted with crime, but that arrange-

ments should be made for sending free emigrants in sufficient numbers to neutralize the evil effects of a continual accession of persons who have incurred by their offences the sentence of transportation. With this view it is intended that the whole of the money repaid by the convicts for the cost of their conveyance should be devoted to the promotion of free emigration; and also that the claim of the British Treasury to the revenue derived from the sale of land in return for the annual grant by Parliament for police and gaols should be abandoned, so that a part of the produce of these sales may again become available for emigration. But as at first there can be little or no receipts from these sources, Parliament will be asked this year to provide the funds necessary for sending out a certain number of free emigrants to Van Diemen's Land. After a time, however, it may be hoped that the repayments to be made by the convicts, added to the colonial funds specially applicable to emigration, will afford sufficient means for keeping up a continued stream of free emigration. It is also very desirable, both as regards the convicts themselves and the interests of the colony, that the wives and families of married convicts holding tickets of leave should be enabled to join them, and with this view it is proposed that those married convicts whose conduct during the two first stages of their punishment has been such as to deserve this indulgence, should be allowed to have their wives and families sent out to join them, on condition that half the expense of their conveyance is provided for either by means of any assistance afforded to them by their friends or the parishes to which they belong, or else by being taken as an advance, to be repaid by the convicts on the same terms as the debt incurred by their own removal. The remaining half of the expense thus incurred will be defrayed from the funds to which I have just adverted as being applicable to free emigration.¹

I confidently trust that this arrangement, with the energetic and praiseworthy efforts which I am aware that the clergy of all persuasions are making to promote religious improvement, will guard the colony from any serious danger of moral injury from the measures which are contemplated. I trust also that the colonists will see in these measures evidence of a no less anxious attention on the part of Her Majesty's servants to their interests, than to those of the mother-country. . . .

¹ Many efforts were made to promote free emigration to Van Diemen's Land, not so much of the ordinary class of assisted emigrant as of men with a little capital, but they completely failed so long as transportation continued.

LETTER FROM JACKSON TO HAWES [EXTRACTS]¹

(C.O. 280/252: P.R.O.)

Founders Hall, Lothbury,
March 1849.

SIR,

May I beg you to submit to Earl Grey the few remarks which occur to me to offer on the Papers recently laid before Parliament on the subject of Convict Discipline and Transportation? I shall endeavour to avoid all merely controversial matter.

It would appear that (including 466 men at Norfolk Island) there were in April of last year 22,678 male convicts under the Sentence of the law in Van Diemen's Land, and 3,936 females. By the census taken of the Colony last year there were 8,832 men in the Colony, now free, but who had been convicts; and 2,687 women in the same 'civil condition'. But the total population of the Colony in 1848 (excluding the Military) was 67,918. . . .

But these 38,133 criminals may all be considered as *adults*. Now the total male and female population, above 14 years of age, was 51,373. So that, of the adult population of Van Diemen's Land, more than *three fourths* are or have been convicts. This was the social condition of the Colony last year.

There is evidence in the Papers of improvements having been effected in the discipline of the Convicts under the immediate supervision of the Government; and the reports of the Officers are conceived in a very hopeful spirit. . . . But I believe there can be no question that, conceding the penal affairs of the Colony to be better administered now than formerly, the convicts, when they emerge from the Gangs, are not a whit better prepared for intercourse with society. Those gangs are still reservoirs of vice, inactive it may be to some extent for a time, but destined eventually to spread over the land and add corruption to corruption. Lord Grey will, I apprehend, be by this time furnished with further proofs of this.

I must now beg his Lordship's attention to another feature in the present state of things in the Colony. His lordship will be aware that so large a number of convicts being sent into the Colony, who could not leave it, was in effect to pass a law, as imperative as if of statutory enactment, that the Colonists must part with their free labourers and employ convicts. But Sir William Denison would almost seem to regard this as a necessary and permanent law of population in Van Diemen's Land. . . . In connexion with this subject the following

¹ J. A. Jackson was the London Agent of the Van Diemen's Land colonists. He was at various times editor of the *Launceston Advertiser*, an official in South Australia, and manager of a Melbourne bank.

observation in one of the Reports of the Comptroller General of Convicts appears to me most remarkable. . . . 'A stream of emigration continues steadily,' he observes, 'to flow out of the Colony, which will greatly improve the condition of the Convicts in private service, and cause a rapid increase in wages already arrived at a fairly remunerative rate.' What is this stream of emigration thus alluded to—I trust I do the Comptroller General no wrong—in a tone which sounds almost congratulatory? It will be seen in the Return at page 259. This return shews that in the one year ending 30 May 1848,—652 *originally free* people left Hobart Town and 777 the town of Launceston, for the adjacent Colonies; and these numbers do not include children. During the same year only 650 persons, free by servitude, left the Colony. The colony is rapidly drawing towards that consummation of misfortune when the only people left will be the free employer, chained to the soil on which he has expended his all, and the convict pass-holder.

And now may I be permitted to ask what can be the remedy for this state of things? Is it not plainer than ever that, how excellent soever the general plans of the Government may be, not one more convict should be sent to Van Diemen's Land? I have always felt happy to bear my humble testimony to Lord Grey's anxious desire to consult the welfare of the Colony. It is conspicuous both in his professions and his acts. The Colony is indebted to his lordship for the surrender of the Land Fund, his constant endeavours to cause improvements in the discipline of the convicts, his measures adopted for sending out the wives and families of deserving convicts, and at least his *reduction* of the number, and the improved character, of the convicts to be sent there in future. I hope the Colonists will not be slow to acknowledge these acts. I am however better able than those distant Colonists to appreciate the various difficulties which his lordship has to encounter. But still I continue firmly persuaded that the complement of justice to the Colony requires that not another convict be sent there; and whatever the inconvenience in other quarters and to other interests, I respectfully submit that, in the authenticated state of facts which I have adduced, the first consideration, the first debt of justice and good policy, is due to the free Colonists of Van Diemen's Land. Free people are still leaving the Colony—is this then a time to add to the convict classes however small a number of even the most promising 'Exiles'? But had this free emigration ceased, still the fearful disparity, as before explained, of free and bond, would require that any addition to the labour market should be of free people. Now the facts are briefly, that a community of which the labouring classes are nearly all convicts and are fearfully depraved are daily losing their small minority of free people; and at this time, instead of measures being adopted to send convicts away, convicts are still to be sent in. But if the British

Government is really so circumstanced at the present moment that it cannot send away any convicts, at least let no more be sent in—so that the Colony may have the chance of participating in the general benefit of the free emigrations now going on to the Australian Colonies; and getting back, at no public cost whatever, some of the thousands of the free people who have left the Island. . . .

Lord Grey has been pleased to communicate to Sir Charles Fitzroy that if the Legislative Council of New South Wales should not agree to receive a portion of the convicts to be annually removed from this country another destination must be found for them.

Could not his lordship at least concede as much to the Colonists of Van Diemen's Land? I am persuaded nothing could be more calculated to spread contentment in that remote community.

I have, &c.,
(signed) J. A. JACKSON.

12

LETTER FROM LATROBE TO COLONIAL SECRETARY, NEW SOUTH WALES [EXTRACTS]

(P.P., 1850, xlv.)

Superintendent's Office, Melbourne, March 7, 1849.

SIR,

I have the honour to acknowledge the receipt by last mail of a copy of the 'Supplement to the New South Wales Government Gazette' of Friday the 23rd ultimo, containing a Despatch addressed by the Right Hon. the Secretary of State for the Home Department, explanatory of the views and intentions of Her Majesty's Government on the subject of convicts and transportation.¹

With special reference to the intimation conveyed in the closing paragraph (10) of this Despatch, that under the impression that the reception of convicts of a certain class and under certain arrangements previously detailed, would not be adverse to the wishes of the inhabitants of the colony, a project of sending out ticket-of-leave holders would be acted upon until his Lordship should receive an answer to that communication; but that if it should then appear that they were objected to, no more would be sent: I consider myself justified in at once, without hesitation, intimating to his Excellency my conviction that, as far as the Port Phillip district is concerned, the course proposed to be pursued will be most strongly deprecated by all classes of the inhabitants in town and country.

¹ This despatch had stated that, in anticipation of colonial approval, a certain number of ticket-of-leave convicts would be sent out to New South Wales unaccompanied by the free emigrants who were, under the original arrangement, to have gone out simultaneously at Government expense. If the Legislative Council, however, were not prepared to agree to these terms, no more would be sent.

Whatever serious difference of opinion may have existed amongst distinct classes of the colonists of Port Phillip, as to the expediency or propriety of the introduction of 'exiles,' who from the moment of landing were to all intents and purposes free men, the strongest sense of repugnance has at all times, and almost universally been expressed as to the introduction under any arrangement of prisoners of any class under sentence.

It was from the very outset understood both at home and in the colony that although the Port Phillip district might be an integral portion of New South Wales, it was not to be made a receptacle for prisoners under sentence.

The late Governor (Sir George Gipps) cited the instructions he had upon that point, upon all occasions, as the reason why he declined, except, in very special cases, to allow the introduction of any number of prisoners, either as assigned servants, or for employment under the Government on public works; and this at a time that the public necessities would perhaps have justified their temporary and limited introduction. He never consented to a departure from the rule to my knowledge, without admitting that it was such.

The intermixture of the comparatively small number of convicts thus nevertheless introduced among the population, in the absence of those means of perfect control which were at hand in the Middle District,¹ was always regarded both by the local Government and the people as an evil. For my own part, it may be recollected, that I took more than one opportunity of suggesting the withdrawal of the whole number; and I considered it, in common with the colonists, as a point gained, when the effect of the measures presented, in consequence of the abolition of transportation to New South Wales, was to rid the district of almost all men under sentence, except such as were under strict confinement in gaol.

In the views entertained by the Legislative Council of the colony, as set forth in the addresses presented to his Excellency in 1847, expressing the willingness of that body to concur in the introduction into the colony of convicts holding tickets-of-leave, or conditionally pardoned, on the terms proposed in the Secretary of State's Despatch of the 8th September, 1848, the great mass of the inhabitants of Port Phillip were not participants. On the contrary, as far as the plan was openly canvassed, it met with but faint support, and with general reprobation.

The resumption of free emigration, and the prospect now held out of a continued stream of free labour from England, has at this date rendered the introduction of any further supply of *Exile* labour even,

¹ The 'Middle District' was virtually what is now the State of New South Wales. The term had come into use in 1840, when Lord John Russell had proposed to introduce a different land system into Port Phillip to the south and (in due course) Moreton Bay to the north (see above, p. 228, note 1). Though this intention was abandoned, the division into districts was retained.

uncalled for by any class of the community; and were this not the case, the manifest proof which can now be adduced of the impossibility of the Home Government acting up to its own principles and original intentions of sending out under that denomination none but such whose character would justify the measure, would go far to render the prospect of their future ready reception and employment very doubtful. At the same time, the necessity which prompted the private importation at the cost of a certain class of the colonists, of emancipist labour from Van Diemen's Land (which importation either under such arrangement, or unassisted, has far exceeded the importation of exiles from the mother country), is no longer felt.

The fact that I have alluded to above, that it has been seen in the case of the exiles that the Home Government could not act up to the principles originally laid down in devising that measure, conclusively shows me that the same experience must be reaped with respect to the class of prisoners whom it is now designed to send out as ticket-of-leave holders; and that do what the Home Government may, the incorrigible and hardened will find place in the ranks of the ticket-of-leave men, as well as the penitent and reformed. . . .

Further, it must be seen that the internal arrangements of the district are not such as safely to admit of it. We have none of the machinery or facilities, which must be required, before any such class of men can be justly introduced. Neither the police arrangements in town or country are calculated to meet such a measure. . . .

In my opinion, no measure, however limited the extent to which it may be eventually carried out, will be so calculated to disgust and dishearten the colonists, and to check the emigration of the better classes from the mother-country, and that of a most useful addition to the population from the continent of Europe, to which circumstances have thrown Port Phillip open. It will, I am assured, create a general distrust in the purposes and principles of both the Colonial and Home Government, and consequently must awaken disaffection, and strengthen the bonds of faction. . . .

PROTEST OF PUBLIC MEETING AT SYDNEY

(*P.P.*, 1850, xlv.)

Protest adopted at a Public Meeting of the Inhabitants of Sydney, held at the Circular Quay, on Monday, June 11, 1849.

We, the free and loyal subjects of Her most Gracious Majesty, inhabitants of the city of Sydney and its immediate neighbourhood, in public meeting assembled, do hereby enter our most deliberate and solemn protest against the transportation of British criminals to the colony of New South Wales:—

Firstly. Because it is in violation of the will of the majority of the colonists, as is clearly evidenced by their expressed opinions on this question at all times.

Secondly. Because numbers among us have emigrated on the faith of the British Government, that transportation to this colony had ceased for ever.

Thirdly. Because it is incompatible with our existence as a free colony, desiring self-government, to be made the receptacle of another country's felons.

Fourthly. Because it is in the highest degree unjust to sacrifice the great social and political interests of the colony at large, to the pecuniary profit of a fraction of its inhabitants.

Fifthly. Because being firmly and devotedly attached to the British Crown, we greatly fear that the perpetration of so stupendous an act of injustice by Her Majesty's Government will go far towards alienating the affections of the people of this colony from the mother country.

For these and for many kindred reasons,—in the exercise of our duty to our country,—for the love we bear our families,—in the strength of our loyalty to Great Britain,—and from the depth of our reverence for Almighty God,—we protest against the landing again of British convicts on these shores.¹

(signed) RT. CAMPBELL, Chairman,

And on behalf of the Public Meeting.

¹ Despite this protest, there was a keen demand from the squatters for the services of the ticket-of-leave men on board the *Hashemy*, which had just been sent on from Melbourne to Sydney at Latrobe's request, and they were hired accordingly.

RESOLUTIONS OF PUBLIC MEETING AT CAPE TOWN [EXTRACT]¹

(*P.P.*, 1850, xxxviii.)

Resolutions proposed at the Public Meeting held in Cape Town, on the 4th July, 1849, and carried unanimously.

1. Moved by J. J. L. Smuts, Esq.; Seconded by A. M'Donald, Esq.

That the introduction of criminals under sentence of transportation, exile, or banishment from the United Kingdom, or any other quarter, is injurious and degrading to this colony, and ought to be resisted.

2. Moved by Rev. Dr. Adamson; Seconded by Mr. Advocate de Wet.

That the British Government has no right to degrade into a penal settlement the Cape of Good Hope, which became a portion of the British Empire by capitulation and cession from a friendly power, and not by planting or conquest,—with its rights and privileges as a free and not a penal settlement solemnly guaranteed; and that all attempts so to injure and degrade it, are unjust and tyrannical, and may be constitutionally resisted by the inhabitants as British subjects.

3. Moved by Mr. Advocate Ebdén; and Seconded by Mr. Lochner, Commandant of the Cape Burghers in the late war.

That the insertion of the Cape of Good Hope in the Orders in Council of September 4th, 1848, as a place to which convicts may be conveyed, simply by an order from one of the Principal Secretaries of State, in opposition to the petitions, remonstrances, and protests of the inhabitants, presented to Her Majesty and both Houses of Parliament, is subversive of the rights and privileges of this community.

4. Moved by J. H. Wicht, Esq.; Seconded by T. Ansdell, Esq.

That the conduct of Earl Grey in first directing the Governor to ascertain the opinions and wishes of the people on this vital question, and then acting in defiance of their unanimous decision, is an exaggeration of insult added to injury, towards an unoffending community, which proves him to be unworthy to retain any place in the government of a free people.

¹ In August 1848 Lord Grey had sent to the Cape, among other colonies, a suggestion that the colonists should take a certain number of ticket-of-leave convicts. At the same time he privately informed the Governor that, relying upon subsequent approval, he was sending at once a small number of men—chiefly Irish peasants who had been driven by famine to agrarian crime. The ship was from various causes delayed, and the longer its expected arrival was deferred, the higher rose the excitement of the colonists and the more violent became their proceedings. When it at last reached the Cape, Sir Harry Smith merely detained it in the harbour at Cape Town until he received orders in (Feb. 1850) to send it on to Van Diemen's Land.

5. Moved by Mr. Advocate Watermeyer; and Seconded by J. Stein, Esq.

That the conduct of the Governor, Sir Harry Smith,¹ in refusing to take upon himself the responsibility of suspending this injurious and degrading measure, 'when he found the universal dissatisfaction which the proposal excited at the Cape, supported by arguments of a weighty nature,' as all Governors of distant possessions are expected to act in emergencies, and as Sir Charles FitzRoy and Sir William Denison did last year in the two penal settlements of New South Wales and Van Diemen's Land, for which they immediately received the entire approbation of Her Majesty's Government; and his determination to carry out the measure, in violation of a pledge to the contrary given to the people, in the name of Her Majesty's Government, and in contempt of an opposition on the part of an injured and insulted people, such as never was before equalled in any part of the British empire, being absolutely universal, prove that the Government of this colony, as at present administered, is wholly at variance with the just and inalienable rights of British subjects, and perilous to the honour, safety, and happiness of the country.

6. Moved by Professor Changuion; Seconded by R. P. Solomon, Esq.

That it is the right and duty of the inhabitants of this colony, individually and collectively, in their private and public capacities, to oppose the execution of this injurious, degrading, despotic, and dangerous measure, by all constitutional means, and that one of the most effectual means will be to sign and rigidly adhere to the following pledge:—

'We, the undersigned, colonists and inhabitants of the Cape of Good Hope, hereby solemnly declare and pledge our faith to each other that we will not employ, or knowingly admit into our establishments or houses, work with or for, or associate with, any convicted felon or felons sent to this colony under sentence of transportation, and that we will discountenance and drop connexion with any person who may assist in landing, supporting, or employing such convicted felons.'²

¹ Sir Harry Smith, after a long and extraordinarily varied military career, held the office of Governor of the Cape from the end of 1847 until 1852. Earlier, he had been the principal lieutenant of Sir Benjamin D'Urban, and his appointment did in fact mark a return to the native policy with which D'Urban's name was connected: in the interval he had won great fame in India, particularly by his victory at Aliwal. In the affair of the convicts, where a mistake might have had disastrous results, his conduct was an admirable blend of firmness and discretion; and indeed he always kept a cool head in a crisis, and though he loved popularity, was not diverted by it from his duty. In questions of high policy, however, his judgement was not so sound: he lacked depth, was deceived by appearances, and led astray by his self-confident optimism.

² This 'pledge' was carried into effect when the convict ship arrived in September. Not only the ship itself but all the officials of the Colony in Cape Town, the Governor included, were boycotted by the Anti-Convict Association, though the loyalty of the moderate minority enabled them, with some difficulty, to procure supplies.

7. Moved by H. E. Rutherfordord, Esq.; and Seconded by the Rev. Mr. Morgan.

That a petition be presented to the Queen, praying that the Orders in Council of the 4th September, 1848, in which this colony is named as a place to which convicts may be transported, be revoked, and that Her Majesty may refuse her consent to any proposal that may be made by her Ministers to insert the Cape at any future time among the places to which convicts, or persons under sentence of exile or banishment, may be conveyed; and that Her Majesty may be pleased to order the removal of such convicts as may have been conveyed to the Cape under the authority of the said Orders in Council.

8. Moved by J. A. Merrington, Esq.; and Seconded by G. W. Prince, Esq.

That as the Colonial Department of Her Majesty's Government has justly forfeited the confidence of the people, application shall be made, with the least possible delay, to the Queen and to both Houses of Parliament, praying that the Cape of Good Hope may be expressly excepted, by an Act passed for that purpose, from among those places to which offenders may be conveyed, by virtue of Orders in Council.

15

RESOLUTIONS OF PUBLIC MEETING AT PERTH

(*P.P.*, 1851, xlv.)

At a Public Meeting held at the Court-house, Perth, on Wednesday, 10th July, 1850, in pursuance of a requisition bearing date 9th June, G. F. STONE, Esq., High Sheriff, in the chair, the following Resolutions were unanimously carried:—

Proposed by Mr. M. CLIFTON, and seconded by Mr. PEEL—

That this meeting are desirous of expressing, in the warmest terms, their sense of the ready acquiescence of Her Majesty's Government at home with the prayer of the Petition for the transportation of convicts to this colony, for employment on public works; and of offering to Earl Grey, Her Majesty's Principal Secretary of State for the Colonies, their grateful acknowledgments for the promptitude with which he has commenced the system of sending out the first draft of convicts, with the accompanying staff, under the control of an officer so well qualified to carry it into beneficial operation as Captain Henderson.¹

Proposed by Mr. BURGESS (for Mr. SAMSON), and seconded by Mr. HELMS—

That this meeting, while they thus most thankfully receive the boon conferred on the colony by this measure of Her Majesty's

¹ Captain E. Y. W. Henderson was Comptroller of Convicts in Western Australia from 1850 to 1862, later Superintendent of Convict Prisons in England, and later still Chief Commissioner of the Metropolitan Police.

Government, and do not in any manner wish to impose on it any conditions, feel it, nevertheless, necessary to express their opinion that the objects for which the colonists prayed for the introduction of convicts would not be fully attained if their numbers were limited to a small extent, and any doubt existed of the permanency of the system of transporting convicts hither: and therefore this meeting desire to make known this their opinion to Earl Grey, with their earnest request that all the establishments may be formed upon a scale calculated to receive large bodies of prisoners; and that Her Majesty's Government will continue, by degrees, to send out, on the system explained in Mr. Hawes's letter of the 24th Dec., 1849, to the Manager of the Colonization Assurance Company,¹ such numbers as may be commensurate with the works which are necessary for the improvement of the colony, and to develop and render available its resources and capabilities.

Proposed by Mr. G. SHENTON, and seconded by Mr. HAMERSLEY—

That this meeting are desirous further of recording their gratitude to Her Majesty's Government for uniting with the transportation of convicts of deserving character the transmission to this colony of pensioners and other free emigrants; being satisfied that in proportion as labour is abundant, capital and *bonâ fide* settlers will be attracted to the colony, and its general prosperity advanced. But, while animated with these sentiments, this meeting cannot refrain from expressing their opinion that disappointment and distress could alone await the greater part of the persons thus brought to the colony, unless the permanency, as well as the magnitude of the Convict Establishment be secured.

16

DESPATCH FROM DENISON TO GREY

(July 14, 1851) [EXTRACTS]

(C.O. 280/277: P.R.O.)

I forward herewith some returns relative to the number of Convicts who have arrived in the Colony, the number hired &c., which will enable your Lordship to judge of the correctness of the views brought forward by Mr. Aikenhead and will prove that the demand for labour is far too urgent to allow the Inhabitants of this Colony to combine to resist a system by which only is their prosperity ensured.

If this be the case under ordinary circumstances, what must be

¹ The Colonization Assurance Company was formed to promote emigration, to Western Australia in particular, on a somewhat complicated system based on the principle of insurance. It received concessions from the Government and sent a few emigrants out, but it disappeared from sight after 1851.

expected when the discovery of Gold in New South Wales is drawing a large portion of the available labour from the adjoining Colonies?

The news of this discovery only reached me a short time since, and it has already created much excitement among all classes of the population. I cannot of course attempt to guess, even, at the amount of evil which this discovery will bring in its train;—that it will be fraught with injury to the Pastoral Interests of New South Wales can hardly be doubted, or that it will injure the character of a population already by no means remarkable for the virtues of Industry or Self denial.

Here, however, owing to the presence of the Convicts we shall be able to participate in the advantages which a rise in the price of produce will hold out to the Agriculturist, without suffering in a corresponding degree by the rise in the price of labour. . . .

I have never attempted to conceal from Your Lordship that a large numerical proportion of the Inhabitants of this Colony are opposed to the continuance of Transportation. It stands to reason that the whole of the working class must be adverse to an arrangement, the tendency of which is to keep down the price of labour. They oppose Transportation on this ground, and they would, I believe, be equally averse to any scheme of immigration by which similar effects would be produced. This feeling was openly avowed at a Public Meeting in Sydney.

If, then, the question were to be decided by numbers, it is evident that the opponents of Transportation would have a large majority on their side.

I may, however, go further than this.

I have always told Your Lordship that among the employers of labour there are very many who are opposed to the continuation of Transportation,—some from an erroneous and exaggerated idea of the injurious effects which they conceive it to have produced upon the morals of the community,—others from an opinion hastily taken up that it has not been conducive to the material prosperity of the Colony.

The number of those who have lately declared themselves the advocates for the immediate cessation of Transportation has been very much increased, partly because a pledge has been very generally exacted from the Candidates for Seats in the new Council that they would oppose Transportation, and partly from a feeling on the part of those who were indifferent, and of some of those who were in favour of its continuance that as I was known to be opposed to the views of the Anti-Transportationists, and as Your Lordship had expressed the intention of Government to maintain the present arrangements, they might with safety to their own Interests, and those of the Colony, attempt to secure a little popularity by joining in the cry against Transportation. . . .

On the other hand, there are several among the Merchants, the Shopkeepers and the owners of property who, seeing clearly the ruin which must ensue, should the rate of wages in this Colony be assimilated to that in New South Wales, are strongly opposed to the cessation of Transportation, until some other efficient means of supplying the necessary amount of labour can be devised.

I sent to Your Lordship in my Despatch No. 52 dated 27 March 1851 the names of several of these men, and there are very many more who, residing quietly on their properties at a distance from the bustle and excitement of the Towns, have neither the opportunity nor the inclination to maintain their opinions publicly.

The active party opposed to Transportation have attempted the formation of an Australian League a Copy of the conditions of which I forwarded to Your Lordship in my Despatch No. 295 dated 27 September 1850, and I have no doubt that attempts will be made to enhance the importance of the League in the eyes of the Government and the People at Home.

Here, however, very little regard is paid to it, and I confess that I attach very little importance to the action of a Body which seeks to obtain by efforts external to itself, a result which might be much more safely and certainly carried out by some personal sacrifice on the part of the Members.

I caused to be examined the Register of the Convict Passholders who are hired from the Government Depôts, and I find now in the employment of 128 persons whose names have appeared in the Public Prints as Subscribers to the League, no less than 183 Male and 41 Female Passholder Convicts. No return of the services of Ticket of Leave holders is kept.

Your Lordship will be able thus to judge whether much is likely to be effected by such a Body. Time will be wasted in Public Meetings and Resolutions,—much paper expended in Protests and correspondence—some little money perhaps collected for the payment of a set of itinerant agitators;—but few, very few indeed, will submit to the sacrifice which the rejection of Convict labour will entail on them.

17

ADDRESS OF LEGISLATIVE COUNCIL OF VICTORIA¹
(*P.P.*, 1852, xli.)

To His Excellency Charles Joseph La Trobe, Esquire, Lieutenant-Governor of the Colony of Victoria and its dependencies, &c. &c.
May it please Your Excellency,

We, her Majesty's most dutiful and loyal subjects, the members

¹ This address is undated, but was forwarded home by La Trobe on December 4 1851.

of the Legislative Council of Victoria, in Council assembled, beg respectfully to inform your Excellency that we have this day in Council unanimously affirmed the following resolutions:—

That although this colony has emphatically refused to receive convicts transported direct from Britain of any denomination or under any circumstances whatever, and although the British Government now abstain from attempting this course, nevertheless this colony as being immediately adjacent to Van Diemen's Land is exposed to an incessant influx of the criminal population of that island, promoted by the arrangements of the Tasmanian Government; and the recent system of issuing pardons to prisoners newly arrived in Van Diemen's Land, made conditional on these parties quitting the penal settlement, can be regarded only as an evasion of the moral rights of this colony, which, as the most accessible resort of these persons, is thus exposed to all the worst evils attending direct transportation.

That in addition to the moral injury resulting to society from these continued accessions to the population, there is entailed upon this colony an unusual and enormous expense for police and gaols, the criminal convictions in the great majority of cases being of persons who had been originally transported to Australia under sentence for crime, and the colonial public having ever before them a costly, difficult, and discouraging problem in the question of prison discipline and the management of large numbers of offenders.

That no system by which criminals are accumulated in any one locality can be otherwise than subversive of every right principle of society, such portions of the community necessarily standing forth as a foul and contaminating blot upon the social surface; and that this view of the subject is alike suggested and confirmed by the language of the present Secretary of State for the Colonies, when he himself declared in 1847 with reference to Van Diemen's Land, and with the full intention at that time on the part of the Home Government of abolishing transportation (an intention which has since been unhappily set aside) that the effects resulting from this system were a disgrace to the British name.

That the recent discovery of gold apparently spread in large quantities over this and the adjacent colony, now places the transportation question in a new and still more alarming light, both as regards the internal tranquillity of this colony and also as to the expediency of continuing as a punishment the transportation of offenders to this auriferous region of the world, a system which in the opinion of this Council must in a great degree operate in the mother country as a bounty on the commission of crime.

That as the great material prosperity of these Australian Settlements has been attracting hither large numbers of the population of the parent state, and of other parts of Europe, and as this extension of colonial society must soon be immensely accelerated by the an-

nouncement of the discovery of gold, in connexion with the anticipated early introduction of direct steam navigation; therefore under these interesting and momentous circumstances, indicative of so complete a change in this part of the world, since Britain in the preceding century cast forth her transported criminals upon an unexplored and desolate sea coast, this Council desires to recognize a great principle of mutual necessity and justice, that in the present condition and prospects of this hemisphere, it is an obligation on the part of the parent state, as it must be also with every other government and people, not to eject her criminals into these other societies, which are already sufficiently charged with their own; that any imitation of her penal policy on the part of other European states would tend to involve in social and moral destruction the whole southern hemisphere, and that no accidental circumstance whatever of established usage or legal right can either affect the moral bearings of the case or remedy the disorders that result from such a system.

And we beg respectfully to request your Excellency to forward the foregoing resolutions to the Secretary of State for the Colonies, with a recommendation of their favourable consideration by her Majesty's Government.

(signed)

J. F. PALMER, Speaker.

18

DESPATCH FROM PAKINGTON TO DENISON

(December 14, 1852) [EXTRACT]

(*P.P.*, 1852-3, lxxxii.)

Whilst I do not wish for a moment to question the sincerity of the feelings which have been expressed against the introduction of convicts, yet the reports which it has been your duty to furnish of the readiness and almost indeed the avidity with which the services of the convicts in each successive ship that arrived have been engaged by the settlers, certainly raise at least a presumption that opinions on the subject in the colony are divided, and that there must be many who are glad of an opportunity to secure the advantage of this description of labour.

Her Majesty's Government have not overlooked the considerations which on these and on other grounds of great national importance may be urged in favour of transportation. But, whatever may be their value, taken in themselves, we find, as I have above stated, that there is a general expression of a strong repugnance in Van Diemen's Land and in the adjacent colonies to the further reception of convicts in either of them. Whatever may be the private opinions of individuals who have not come forward on this question, numerous public meetings and all the legislative authorities in these colonies have declared themselves strongly against transportation. Her Majesty's Government have therefore felt it their duty to take such steps as

may enable Her Majesty, with the assent of Parliament, to comply with a wish so generally and so forcibly expressed by Her subjects in those colonies.

The propriety of this decision is supported by the effects of the discovery of gold. It would appear a solecism to convey offenders, at the public expense, with the intention of at no distant time setting them free, to the immediate vicinity of those very gold fields which thousands of honest labourers are in vain striving to reach. It is quite true that the offenders have to undergo a preliminary period of imprisonment and of labour; but these are not likely to daunt reckless minds. Making every allowance for your efforts to prevent the desertion of convicts whilst still subject to control, it is to be remembered that they will in time become qualified for conditional pardons; and I think it must be admitted by every impartial observer that transportation would be disarmed of its terrors, and that a very undesirable impression would be produced on the minds of the criminal class, if offenders should long continue to be sent to an island in the immediate neighbourhood of the gold colonies of Australia.

You will readily perceive that it must be impossible at this moment to fix the actual date for the end of transportation to Van Diemen's Land. In order to diminish the number of convicts sentenced to transportation, so as to admit of their being disposed of in the more limited field which will remain available, certain alterations in the law must be submitted to Parliament; new buildings must be constructed, to accommodate the larger number of prisoners who would have to be detained in this country; and it cannot be expected that so great a revolution in the administration of the criminal law can be accomplished without a sufficient allowance of time for the extensive changes which it will require. On the time by which we may hope that these can be completed I shall probably address you again, when the arrangements are further matured. I can only assure you that Her Majesty's Government are sincerely convinced of the good policy of the proposed measures, and anxious to carry them into effect as speedily as possible; and I trust that when the full purpose which is entertained of accomplishing the object shall be known in the colony, the good sense and moderation of the inhabitants will lead them to acquiesce without reluctance in the continuance of the existing practice until the large alterations required for its abolition can be duly provided for in this country. I may state, in conclusion, that it is a source of much gratification to me to convey to you a decision so much in accordance with the strongly expressed wish of the colonists of Van Diemen's Land; and I trust that they may recognise in it the desire of the Government of this country to consult their wishes, and to strengthen their loyalty to the Crown and attachment to the British Empire.

I have, &c.

(signed) JOHN S. PAKINGTON.

IV

COMMERCIAL POLICY

THE whole structure of the first British Empire was raised upon the foundation of the Navigation Acts and the conception of economic self-sufficiency. By 1830 'reciprocity', the watchword of Huskisson, had been substituted for the old guiding principle of monopoly, but the 'old colonial system' had still a very potent influence and the old catch phrase 'ships, colonies, and commerce' was still often heard in the House of Commons. The system had two aspects—the restrictions laid upon colonial trade, represented by the Possessions Act of 1833 [1], which consolidated the work of Huskisson and the minor changes made by his successors, and the privileges given to colonial goods under the English tariff, too infinitely various to be represented by any document. The colonies were on the whole satisfied with the system: the recent changes had been to their advantage, and in compensation for its restrictions they got not only trade privileges but protection from attack [2]. But it was far from being acceptable to a growing body of opinion in the Mother Country. Next to the corn laws themselves, the timber duties—the most important item in the tariff from the North American point of view—and the sugar duties were perhaps the most frequent objects of criticism. The emancipation of the slaves seriously affected colonial sugar production and sent up the price, and an outcry arose for the admission of foreign sugar at a moderate rate of duty. The Melbourne Ministry, when they attempted to meet this outcry, were beaten by Peel, with the help of the anti-slavery enthusiasts, but Peel himself saw clearly that the time had come for far-reaching changes in the commercial system of the country. His Budget of 1842 reduced the preference on many colonial articles, and in particular on timber [3]; and at the same time he revised the Possessions Act, with the result that the privileges given to the North American Colonies in the markets of the West Indies were substantially reduced [4]. If, however, the North American Colonies were to lose their special privileges, the Canadians could not see why they should not be admitted to the benefit of the corn-laws of the United Kingdom, and this was an argument so difficult for any but a free trader to answer that in 1843, when they had imposed a duty upon American corn, the British import duty on their wheat and flour was lowered to a merely nominal rate [5]. In regard to colonial tariff legislation the Peel Ministry pursued the same policy of 'rationalization' [6, 7]. Finally, the demand for cheap sugar continuing unabated, Peel in 1844, when the expiry of a treaty with Brazil permitted him to do so, admitted foreign sugar at a moderate differential duty provided it were grown by free labour [8].

In 1846, however, it became clear that Peel's reforms had not availed to save the old colonial system. The repeal of the corn laws, introduced primarily to meet the famine in Ireland and the agitation of the League in England, came upon the colonies, moreover, as a surprise and a shock. It was only three years since the preference to Canadian corn had been increased, and it was natural that the Assembly should protest [9]. The

whole conception of the nature of the Imperial connexion had in fact to be altered, and, as Gladstone showed, no longer based upon reciprocal commercial privileges, but upon less material things [10]. Not only Canada but the West Indies also were deeply affected by the measures of 1846, for Peel's concessions had by no means silenced the cheap sugar cry, and as soon as he went out of office the Russell Ministry passed a far-reaching measure for the gradual equalization of the duties on all foreign and colonial sugar [11]. At the same time they permitted the colonies to repeal the restrictions laid upon their trade by the Possessions Act [12], and thereby, as they thought, facilitated the transition from Imperial preference to Imperial free trade.

It was clear that the transition would not be easy. The West Indies reeled under the shock, and when a world-wide commercial depression supervened, the Government were forced to postpone until 1854 the day of unrestricted competition with slave-grown sugar [13]. Canada, with her new self-governing privileges and growing sense of power, was in a much stronger position. She took the lead in complaining of the advantages still given to British shipping as against American by the navigation laws [14]. These were repealed in 1849, and the repeal nipped in the bud a tendency among the commercial classes of Montreal to find a remedy for economic distress in annexation to the United States; but Elgin maintained that the only way to avert all danger of annexation was to compensate Canada for the loss of her preference in the English market by securing for her special privileges in the markets across the border [15]. The Imperial Government was still determined to maintain a uniform commercial policy throughout the Empire [16]; but fortunately, owing to the proximity of the North American Colonies to the United States and the nature of their trade, it was possible to square the reciprocity proposal with the theories of the free traders. In 1854, after many failures, Lord Elgin himself negotiated a treaty [17]. It applied to all the North American Colonies; but the Board of Trade were careful to explain that the circumstances were peculiar and that the treaty must not be taken as a precedent [18]. Nevertheless, the days of Imperial control of trade were passing. In 1859 the Duke of Newcastle, at the instance of the manufacturers of Sheffield, ventured a mild remonstrance against the Canadian tariff [19]. Galt, the Finance Minister, was quick to take up the implied challenge, and boldly stated that Imperial interference with colonial tariffs was inconsistent with self-government [20]. Free trade had to yield the precedence to political freedom, and theories of commercial policy could, no more than theories of colonization or of secondary punishment, be put into practice in the Empire against the wishes of the colonies.

BRITISH POSSESSIONS ACT 1833 [EXTRACTS]¹(3 & 4 *Will. IV*, cap. LIX.)

Whereas an Act was passed in the Sixth Year of the Reign of His late Majesty King George the Fourth, intituled *An Act to regulate the Trade of the British Possessions Abroad* whereby the Laws of Customs in relation to the Trade of the British Possessions Abroad were consolidated and amended: And whereas since the passing of the said Act divers Acts for the further Amendment of the Law have been found necessary, and it will be of advantage to the Trade and Commerce of the Country that the said Acts should be consolidated into One Act: Be it therefore enacted . . . That this Act shall commence upon [Sept. 1st, 1833], except where other Commencement is herein particularly directed.

II. And be it further enacted that no Goods shall be imported into, nor shall any Goods except the Produce of the Fisheries in British Ships, be exported from, any of the British Possessions in America by Sea from or to any place other than the United Kingdom, or some other of such Possessions, except into or from the several Ports in such Possessions, called 'Free Ports'.

[Here follows a list of ports, 38 of them specified by name.]

And if any Goods shall be imported into any Port or Place in any of the said Possessions contrary hereto, such Goods shall be forfeited.

III. Provided always that if His Majesty shall deem it expedient to extend the Provisions of this Act to any Port or Ports not enumerated in the said Table, it shall be lawful for His Majesty, by Order in Council, to extend the Provisions of this Act to such Port or Ports. . . . Provided also that nothing herein-before contained shall extend to prohibit the Importation or Exportation of Goods into or from any other Ports or Places in Newfoundland or Labrador in British Ships.²

V. [Privileges granted to Foreign Ships limited to the Ships of those Countries which, having Colonial Possessions, shall grant the like Privileges to British Ships.]

VII. And be it further enacted, That the several Sorts of Goods enumerated or described in the Table following, denominated 'A Table of Prohibitions and Restrictions', are hereby prohibited to be

¹ This was merely a consolidating statute, the main basis of its provisions being Huskisson's great Acts of 1825 (6 Geo. IV, caps. 73 and 114) which opened the trade of the British Colonies, excepting the intercolonial trade, to all nations which, having colonial possessions, granted similar privileges to British ships, and also extended to the colonies the Imperial warehousing system. The principal changes since then had been made in 1830/1, when the United States consented to reciprocity and some modifications were made in the rates of duty to safeguard the trade which had meanwhile arisen between the Northern Colonies and the West Indies.

² The special provisions regarding Newfoundland and Labrador were designed to meet the special circumstances of the fishing industry.

imported or brought, either by Sea or by Inland Carriage or Navigation, into the British Possessions in America, or shall be so imported or brought only under the Restrictions mentioned in such Table. . . .

A TABLE OF PROHIBITIONS AND RESTRICTIONS

Gunpowder, Arms, Ammunitions or Utensils of War,	}
Prohibited to be imported, except from the United Kingdom, or from some other British Possession.	
Tea,	}
Prohibited to be imported, except from the United Kingdom, or from some other British Possession in America, unless by the East India Company or with their Licence during the Continuance of their exclusive Right of Trade. ¹	
Fish, dried or salted,	}
Oil, Blubber, Fins, or Skins, the Produce of Creatures living in the Sea, Prohibited to be imported, except from the United Kingdom, or from some other British Possession, or unless taken by British Ships fitted out from the United Kingdom or from some British Possession, and brought in from the Fishery. . . .	
Base or Counterfeit Coin,	}
Books, such as are prohibited to be imported into the United Kingdom, Prohibited to be imported.	
[Goods imported contrary hereto forfeited.]	

IX. And be it further enacted, That there shall be raised, levied, collected, and paid unto His Majesty the several Duties of Customs, as the same are respectively set forth in Figures in the Table of Duties herein-after contained, upon Goods, Wares, and Merchandize imported or brought into any of His Majesty's Possessions in America.

[Here follows a Table of Duties upon Spirits the produce of the United Kingdom or of any British Possession, with higher Duties upon Foreign Spirits; and upon other Goods, Wares, and Merchandize, not being the Produce of the United Kingdom, or of any British Possession in America.]

LXXXI. And be it further enacted, That it shall be lawful for His Majesty, by and with the Advice of His Privy Council, by any Order or Orders in Council to be issued from Time to Time, to give such Directions and make such Regulations touching the Trade and Com-

¹ In this year the East India Company's monopoly of the China trade came to an end, and with that this prohibition lost such *raison d'être* as it had formerly possessed. Most of the tea actually used in the North American Colonies was admittedly smuggled from the United States, and the Colonies several times petitioned the Imperial Government to remove the prohibition. These efforts were warmly supported by Lord Sydenham, and in 1842 a moderate rate of duty was substituted.

merce to and from any British Possessions on or near the Continent of Europe, or within the Mediterranean Sea, or in Africa, or within the limits of the East India Company's Charter (excepting the Possessions of the said Company) as to his Majesty in Council shall appear most expedient and salutary, anything in this Act to the contrary notwithstanding; and if any Goods shall be imported or exported in any Manner contrary to any such Order of His Majesty in Council, the same shall be forfeited, together with the Ship importing or exporting the same.¹

2

HOUSE OF COMMONS COMMITTEE ON THE TIMBER DUTIES (1835): EVIDENCE OF BLISS [EXTRACT]² (P. P., 1835, xix.)

2379. Are you aware of any English laws affecting the commerce of the British Colonies unfavourably?—All the British manufactures are under protecting duties in the northern Colonies, varying from $7\frac{1}{2}$ to 30 per cent.

2380. Explain that a little more?—The Colonies are prohibited from trading under that penalty or protection given to British manufactures against the manufactures of any other country introduced into the Colonies.

2381. Is that by Colonial law or Act of Parliament?—By Act of Parliament; the laws of trade are enacted by the Imperial Parliament, with which the Colonies have nothing to do but to obey, which they cheerfully do.

2382. They may have been left in bond here and re-exported?—Which is another way of protection, because there are certain articles of foreign production free of duty if imported from the warehouses in Great Britain, and encumbered with the duty of $7\frac{1}{2}$ to 30 per cent. if they come from foreign countries; the whole tendency of the laws of trade is to confine Colonial commerce to the United Kingdom.

¹ These colonies had all been acquired by conquest and therefore in them by constitutional doctrine the Crown in Council possessed legislative powers which are confirmed by this clause. Mauritius and the recently conquered West Indian Colonies are not included, for the reason that by Act of Parliament their trade regulations had already been assimilated to those of the older sugar colonies. The Australian Colonies are not mentioned in this Act, but their Legislative Councils were prohibited by an Act of 1828 from taxing British or laying higher duties than 15 per cent. *ad valorem* on foreign goods.

² The reduction of the duties on foreign timber had often come before the House of Commons in recent years. In 1831 the Whigs had attempted to reduce the duties but had been beaten on the question in the House. This Committee, of which Poulett Thomson as President of the Board of Trade was Chairman, reported in favour of a reduction, but not until 1841 was the question again tackled by the Government, and the Whigs being turned out of office in that year, it was left to Peel to carry it into effect in his Budget of 1842. Mr. Bliss had been deputed by the New Brunswick Legislature and by the merchants of Quebec and Montreal to put before the Committee their case against any diminution of the preference.

2383. You consider the protection given to the importation into this country of Colonial over foreign produce but an equivalent for the restriction imposed for the protection of British interests on the commerce of the Colonies?—Certainly I do, and I believe it is so considered in the Colonies; there is a strong feeling that it is part of the same system, and that whatever advantage they derive from it is in the timber trade; except timber, they have scarcely any exports to the United Kingdom. Imagine that Great Britain were to refuse to take their timber, their situation would be very hard; they are far from Great Britain, but belong to her; they are near the United States, but they belong to Great Britain; the United States refuse to trade with them because they belong to Great Britain, and if Great Britain refuse to trade with them because they are so near the United States, or so far from her, their situation will be most deplorable.

2384. Is the Committee to understand that the Canadians would agree to a free trade in timber, provided a free trade in all other articles were allowed to them?—The Canadians are all attached to the present Colonial system, they require nothing better than to exchange labour with their brethren in the United Kingdom, to send them wood, ashes and oil, and to have from them cottons and woollens, and all other fabrics; they prefer this to free trade, but if they are to be deprived of this, they would be very unwilling I think to submit to the other, to lose the advantage and retain the burthen.

2385. Would not you conceive, that independently of any views of commercial policy, it was exceedingly unjust to repeal the protection that the colonist may require against foreign competition in the home market, without at the same time giving them full scope to supply themselves with such things as they may require for their own internal consumption, wherever they could get them cheapest?—I think that would be felt as a very great hardship; they have wood, they have fish, they have corn and mines, there is a great commercial people near them, but they will not trade with them; they tax their coals, their wood and their flour and their fish so much, that the Colonies have scarcely any export thither in those articles; they cannot trade with the United States, and that because they belong to Great Britain.

DESPATCH FROM STANLEY TO COLEBROOKE (May 17,
1842) [EXTRACTS]

(P. P., 1842, xxxix.)

With respect to the wood trade with the United Kingdom, I perceive that, whilst the petitioners have dwelt upon those portions of the proposed changes¹ which they conceive to be unfavourable to the colony, namely, the diminution of the difference between the duties imposed upon Baltic and British North American timber, they have omitted to notice the reduction (amounting very nearly to abolition) of the duty upon colonial timber, which will necessarily give increased facilities to the importation of this article into this country, and by admitting of a reduction of price in respect of the reduced duty, will tend to increase the consumption, and thus cause a re-action upon the price favourable to the importer, and keep up or increase the employment for the shipping engaged in this branch of commerce.

The advantage of this will be more especially felt in that class of wood which is more peculiarly the produce of British North America, the yellow deal, and which, in fact, meets with no very effective competition from the Baltic timber, in consequence of being applied to different purposes for which the yellow pine of New Brunswick is preferred, both from its superior fitness and its lower price to the consumer. . . .

If the petitioners give due weight to these considerations, Her Majesty's Government trust that they will eventually be of opinion, that whilst the alteration in the timber duties will be found of very great advantage to the consumer in this country, the timber trade of New Brunswick will, so far from declining, be placed in a more sound condition, and with greater prospect of increase than under the existing tariff.

It is, moreover, not immaterial to observe, that whilst the forests of the British North American Provinces are as yet inexhausted, and to a great extent untouched, the great demand which has for a series of years existed for the fir timber of the forests on the Continent of Europe, particularly of Poland, has led to a material diminution of the supplies to be obtained in the immediate vicinity of the great navigable rivers; and that, consequently, it is becoming gradually necessary to derive them from the most distant points, thereby increasing

¹ In his Budget of 1842 Peel estimated the average rate of duty at about 41s. per load on foreign and 8s. or 9s. on colonial timber. He proposed to reduce the duties on the colonial article to 1s. on ordinary timber, 2s. on deals, and 3s. on lath wood, and the foreign duties to 25s., 30s., and 20s. respectively. The changes were duly carried into effect, but the 'railway mania' of the early forties so increased the demand that the consumption of colonial timber rose in spite of the stronger competition from the Baltic, thus justifying the optimistic forecast made later in the despatch.

the cost of bringing them to the point of shipment, and thus tending to create an additional demand for the cheaper article imported from British America.

With these views and anticipations, Her Majesty's Government cannot participate in the fears expressed by the petitioners in reference to the apprehended loss of value in wharves, mills, and other similar establishments in the colony, the want of employment for their labouring population, the decline of the maritime commerce, or the injury to the general welfare of the colony.

Her Majesty's Government are disposed to believe that these apprehensions are founded upon estimates of the probable prices of timber drawn from the prices of that article at the present moment, which are unusually low, in consequence of the depression in the timber trade owing to general causes; and they venture to hope that the proposed opening of the British ports to foreign and colonial produce generally at much lower duties than heretofore, will materially tend to revive all branches of manufacturing and commercial industry; and that the timber trade will not only participate in that revival itself, but will derive collateral advantages from it, both as respects price and demand.

I would, in conclusion, remark, that the measures contemplated for the encouragement of various articles of the agricultural produce of the British Colonies,¹ if passed into law, may be expected at no distant time to become of increasing importance and value to the growing population of New Brunswick, whose industry cannot permanently continue to be so exclusively applied to the business of lumbering, as at the present moment.

I have, etc.
(signed) STANLEY.

4

ADDRESS OF HOUSE OF ASSEMBLY OF NOVA SCOTIA
(*C. O. 217/180: P. R. O.*)

To the Queen's Most Excellent Majesty

The Humble Address of the House of Assembly of Nova Scotia.

May it please Your Majesty

The Representatives of your loyal People of Nova Scotia in General Assembly convened beg leave to solicit your Majesty's gracious consideration of this their Humble Address.

Entrusted by the People of Nova Scotia to guard and protect their varied interests they feel themselves called upon to interpose in their behalf and humbly represent to Your Majesty that those interests

¹ The duties on provisions (bacon, butter, cheese, &c.), which had been virtually prohibitory, were lowered by the tariff of 1842, and a substantial preference was given to colonial produce.

are most deeply involved in the measures recently brought before the House of Commons relating to the intercourse between the North American Colonies and the British West Indies. The intelligence which reached this Colony of the proposed changes in the Trade and Rate of Duties¹ has awakened the most serious apprehension and alarm and we assure Your Majesty that, if the propositions submitted by Mr. Gladstone are carried out in their original shape and allowed to go into early operation without a suitable equivalent on the part of Foreigners, ruin and destruction will be entailed upon those who under sanction and encouragement of the existing Acts of Trade have embarked their Capital in the various Branches of Commerce and Manufactures which they are calculated to call into existence.

We are deeply concerned to notice that the Rate of Duties contemplated by the present Government are more at variance with the immediate interests of the Northern Colonies than the measure of the last Session and together with the free Admission of Lumber into the British West Indies are calculated to destroy our trade in the principal articles of Colonial production, Fish and Lumber and Salted Provisions, the two former of which can be abundantly supplied and at extremely moderate prices to the Consumers and whilst so severe an injury is thus inflicted upon British Subjects we are at a loss to discover any equivalent in the relaxation of those restrictions which shut out those articles altogether from the Ports of the Foreigner.

The Warehousing system brought into extensive operation by those Acts has led to the erection of expensive Buildings in the Capital of the Province and also to a great increase in the amount of tonnage which has been profitably employed in the transportation of our own and Foreign productions—And the Admission of Foreign Wheat free of duty² has led to the expenditure of heavy Capital in the erection of Grist Mills in various sections of the Province, this latter investment being productive of many advantages. It has furnished a considerable export and it has been especially beneficial in furnishing the Coarser Article and at a less price to the poorer population. The

¹ The 'proposed changes', brought into operation by the amending Possessions Act of 1842 (5 & 6 Vict., cap. 49), applied to the colonies the principles of Peel's tariff reforms of 1842, removing a number of prohibitions and restrictions and admitting foreign goods at moderate rates of duty. The lowering of duties on salted provisions, one of the staples of the negroes' diet, was one of the chief objects of the Act, for emancipation had transferred the incidence of the duties from the shoulders of the master to those of the negro himself, and, besides, the higher the price of food, the greater the temptation to the negro to grow provisions instead of working on a sugar estate.

² The removal of the duty on the importation of United States wheat into the Northern Colonies in 1831 followed closely upon the reopening of the trade between the United States and the West Indies. See p. 323, note 1. As at first introduced the proposals of 1842 provided for the removal of this anomaly on the ground that it merely promoted the export of such wheat to Great Britain. However, when the imposition of a duty had been mooted in the Canadian Legislature the predominant opinion seemed to be against it, and it was deemed inadvisable to impose it by Imperial Act over the heads of the Canadians.

direct trade with Foreigners must necessarily throw out of employment both warehouses and Shipping and the imposition of three shillings per quarter duty upon Wheat will be the total annihilation of the Mills.

Your Majesty is respectfully informed that such Additional duty was not anticipated but on the contrary we would suggest the great advantage which would arise to the Province from the Admission into the United Kingdom of All Flour manufactured from Foreign Wheat in the British Colonies duty free—convinced that it would furnish a valuable Branch of Trade and an Export in payment of the Manufactures of the Kingdom.

We humbly solicit of Your Majesty the most deliberate consideration of those measures so far as they affect these Colonies and especially that of Nova Scotia now prosperous and happy under Your Majesty's benign Government. We do not desire to set up our individual interests as opposed to those of the Empire or our sister Colonies but we would maintain that whilst but little real Advantage would result to the British West Indies by admitting the articles of Fish and Lumber and salted provisions in the manner and at the rate proposed there is danger of our dearest interests being sacrificed to Foreign Nations who have not granted any reciprocity but maintain such a rate of duties as totally to preclude us from their Markets.

The competition which must ensue upon the Adoption of the intended Measures for the supply of the British West Indies in the productions of this Province will be greatly in favour of the Foreigner from various Causes. The United States especially can at all times furnish an Assorted Cargo and thus enter the market with a greater certainty of profit than with a Cargo composed of either Fish or Lumber which are subject to very great fluctuations—but the advantage is still more in his favor from the large bounties which are granted for the encouragement of the Fisheries. The United States give a bounty of Three dollars and fifty cents per ton on Vessels of the burthen of from five to thirty tons and of four dollars per ton on all Vessels above thirty tons engaged in the Fisheries and a further bounty of twenty-five cents per Barrel of Pickled Fish exported. A very large bounty is still continued by the French Government on Fish caught by their own subjects and carried to the West Indies—the proposed duty therefore of two shillings per hundred weight on salted Fish and of four shillings per Barrel on Pickled Fish will come far short of placing the Colonist on a footing with those Countries.

We would desire with the foregoing views to press earnestly upon Your Majesty's Government the absolute necessity of extending to some considerable period the commencement of any measure which the wisdom of Parliament may think proper to adopt so deeply involving the vital interests of this Province, that time may be afforded to seek out new Channels for employment and gradually to meet the

contemplated changes—And especially that Your Majesty would be pleased to stipulate for some equivalent on the part of other Governments for the great privileges which at the expense of these Northern Colonies is about to be conceded to them,¹ and that Your Majesty may be correctly informed of the present restrictions which are imposed by The United States upon Colonial productions, we beg leave to add that the duties levied upon dry and salted Fish are one dollar per quintal—on Herrings one dollar per Barrel—on Mackerel one dollar and fifty cents per Barrel—on Salmon two dollars per Barrel and on Lumber twenty per cent ad valorem. On Pork three cents per pound—Beef two cents—Butter five cents—Lard three cents and Cheese six cents per pound—On Potatoes ten cents per Bushel—And on Fish Oil fifteen cents per gallon. In the Spanish Colonies the duty on Fish is about one dollar per quintal and on Lumber five dollars per thousand. And in the French Colonies it may be stated at five francs or four shillings and two pence sterling per quintal on Fish—Mackerel and Salmon two dollars per Barrel and Lumber two dollars per thousand. The reduction of these duties would be regarded as a valuable boon and compensate in some degree to these Colonies for the Advantages they are about to lose.

May it please Your Majesty to regard these views and sentiments as the deliberate convictions of the Representatives of the People of Nova Scotia sensibly alive to the important interests entrusted to them and of the necessity which the present occasion imposes upon them humbly yet earnestly to press them for the information and serious consideration of Your Majesty's Government.

In the House of Assembly,

11th March 1842.

JOSEPH HOWE,

Speaker.

5

CANADA CORN ACT 1843 [EXTRACT]

(6 & 7 *Vict.*, *cap.* XXIX.)

Whereas on the Twelfth Day of October One thousand eight hundred and forty-two an Act was passed by the Legislative Council and Legislative Assembly of the Province of Canada, and reserved by the Governor General for the Signification of Her Majesty's Pleasure, imposing a Duty of Three Shillings Sterling Money of Great Britain on each Imperial Quarter of Wheat imported into Canada, except from the United Kingdom or any of Her Majesty's Possessions, and being the Growth and Produce thereof: And whereas it is recited in

¹ This may perhaps be taken as an early manifestation of the feeling which led, twelve years later, to the Reciprocity Treaty (see below, Nos. 10, 15, 17), but it had no result at the time.

the said Act that it was passed in the confident Belief and Expectation that upon the Imposition of a Duty upon Foreign Wheat imported into the Province Her Majesty would be graciously pleased to recommend to Parliament the Removal or Reduction of the Duties on Wheat and Wheat Flour imported into the said United Kingdom from Canada:¹ And whereas, in consideration of the Duty so imposed by the said Act of the Legislature of Canada, it is expedient that if Her Majesty shall be pleased to give Her Sanction to the Said Act, the Duties imposed by an Act made and passed in the last Session of Parliament, intituled *An Act to amend the Laws for the Importation of Corn*, upon Wheat and Wheat Flour, the Produce of and Imported from the Province of Canada, entered for Home Consumption in the United Kingdom, should be reduced as herein-after is mentioned: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the Tenth Day of October One thousand eight hundred and forty-three, and thenceforth during the Continuance of the Duty so imposed by the said Act of the Legislature of Canada as aforesaid, there shall be levied and paid upon all Wheat and Wheat Flour, the Produce of the said Province of Canada, which shall be imported thence into the United Kingdom after the said Tenth Day of October, and shall be entered for Home Consumption, (the same having been shipped and imported with such Declarations and Certificates as are required in respect thereof in and by the said Act passed in the last Session of Parliament,) the Duties following; (namely)

For every Quarter of such Wheat One Shilling, and so in proportion for a less Quantity:

For every Barrel, being One hundred and ninety-six Pounds of such Wheat Flour, a Duty equal in Amount to the Duty which would hereby be payable upon Thirty-eight Gallons and a Half of Wheat, and so in proportion for a less Quantity . . .

¹ In the speech in which he announced the omission from the Possessions Bill of the proposed duty on American wheat imported into Canada, Mr. Gladstone had hinted that the Canadians might, if they themselves imposed one, put forward a much stronger case for the free admission of their own wheat into Great Britain, for which they had been asking; and Lord Stanley, in a despatch to Sir C. Bagot dated March 2, 1842, alluded to the absence of such a duty as the principal reason for the refusal of this request.

CIRCULAR DESPATCH OF STANLEY TO GOVERNORS OF COLONIES¹

(*P. P.*, 1846, xxviii.)

SIR,

Downing-street, 28 June 1843.

I have to desire that you will call the attention of the Legislature of the colony under your government to the following statement and suggestions:

The imposition of discriminating duties on goods imported into the British colonies, when the discrimination is made for the protection of some branch of British or colonial industry, is an office of great difficulty. To the right discharge of it, an intimate acquaintance with the commercial treaties and political relations between this kingdom and foreign states is indispensable. To legislate on such a subject in ignorance of those treaties and relations, would be to render inevitable much serious practical error.

But, in the nature of the case, it is impossible that this knowledge should be possessed in the requisite degree by the various local Legislatures of the colonies of this kingdom. They have no means of knowing the state or the objects of pending negotiations, nor even of ascertaining, with absolute precision, the terms of treaties actually concluded. If they legislate at all on these subjects, they must do so in ignorance of some facts which cannot be safely excluded from consideration.

Neither is it possible that 40 distinct Legislatures, having no means of mutual communication and concert, should act consistently with each other on such subjects. The local opinions or interests of each colony must dictate the laws of each, and the general code of the empire, compiled from so many different sources, must be at the utmost variance with itself on a subject on which unanimity and consistency is indispensable. In such a state of the law, Her Majesty's Government could not negotiate or treat, with confidence, with any foreign state for commercial purposes; nor could they fulfil such treaties as might be made. Painful and injurious discussions with those states must arise, and perhaps indemnities and compensations must have to be paid.

For these reasons Her Majesty's Government decidedly object in principle to the assumption by the local Legislatures of the office of imposing differential duties on goods imported into the respective

¹ This circular was designed to check a tendency, which seemed to be growing, on the part of Colonial Legislatures, to enact discriminating duties, and in particular to discriminate in favour of neighbouring colonies. Ever since the separation of Van Diemen's Land from New South Wales, for instance, there had been free trade between it and New South Wales. It was some years before such duties disappeared, for it was only the enactment of new laws that was affected by this circular.

colonies. Parliament having already prescribed the rules by which such duties are to be discriminated, with reference to the place of origin or of export, to Parliament alone the power of altering those rules must be reserved. The single exception to this general rule will occur in any cases in which Her Majesty's Government may have suggested to any local Legislature the enactment of any such discriminating duties. If such cases should arise, the Ministers of the Crown would be able to take the necessary measures for obtaining the subsequent sanction of Parliament for any such innovation.

You will, therefore, exercise all the legitimate influence of your office to prevent the introduction into the Legislature of the colony under your government, of any law by which duties may be imposed on goods in reference to their place of production, or to the place from which they may be exported. In the same way, you will exert yourself to prevent the introduction of any law imposing on refined sugar imported into the colony, higher duties, in the case of sugar refined in this country in bond from foreign sugar, than in the case of sugar refined here from British colonial sugar.¹

If, unfortunately, your efforts should be unsuccessful, and if any such law should be presented for your acceptance, your duty will be to withhold your assent to it. From the discharge of that duty, however unpopular it may be, you will not shrink; for by declining to undertake it, you would only subject Her Majesty's Government, and the colony itself, to a still more serious inconvenience.

Her Majesty could not be advised to sanction any colonial law imposing discriminating duties, which Her Majesty's Government had not previously recommended, or which Parliament has not expressly established, or enacting such duties on any terms which Parliament has not prescribed. The disallowance of any such enactments would therefore be inevitable, and that measure would be attended with far more serious inconveniences than any which could result from your own refusal to accept them. I trust, however, that there is no good reason to anticipate or to provide against such a contingency.

I have, &c.

(signed) STANLEY.

¹ Although the importation of foreign sugar for home consumption was forbidden by a prohibitive duty, it was admitted to be refined 'in bond' for re-export in the refined form, and on colonial refined sugar high duties were imposed. The object was, of course, to favour the English sugar-refiners.

LETTER FROM BOARD OF TRADE TO TREASURY

(August 16, 1845) [EXTRACT]

(C. O. 201/361: P. R. O.)

The principles which as my Lords conceive, should guide a Colonial Legislature, in imposing, and the Home Government in assenting to, duties upon the importation of Articles into the Colony, are these: first, that the duties should be imposed only for the purpose of raising a revenue which is needed for carrying on the Gov^t., and which cannot be raised in any less objectionable manner, 2ndly that they should be so adjusted as not to give occasion for the introduction of a protective system; 3rdly that no distinction should be made between the produce of the United Kingdom and that of other British Colonies; and 4thly that any differential duty imposed on foreign Goods should be of moderate amount. . . .

SUGAR DUTIES ACT 1844 [EXTRACTS]

(7 & 8 Vict., cap. xxviii.)

[Sugar Duties Act 6 & 7 William IV continued until 10th November 1844]. From and after that Date until the Fifth Day of July One thousand eight hundred and forty-five, in lieu of the Duties now payable and hereby continued thereon, there shall be charged the Duties of Customs following; that is to say,

Sugar; <i>videlicet</i>	£	s.	d.
Brown or Muscovado or Clayed Sugar, ¹ not being refined, the Cwt.. . . .	3	3	0
The Growth of any British Possession in America, and imported from thence, the Cwt.	1	4	0
The Growth of any British Possession within the limits of the East India Company's Charter, into which the Importation of Foreign Sugar is prohibited, and imported from thence, the Cwt.	1	4	0
The Growth of any other British Possession within those Limits, and imported from thence, the Cwt.	1	12	0
And on Sugar which shall be certified as herein-after is mentioned to be the Growth of China, Java, or Manilla, or of any other Foreign Country, the Sugar of which Her Majesty in Council shall have declared			

¹ The term 'muscovado' was applied to the sugar usually exported from the British Colonies, obtained from cane juice by evaporation and the draining off of the molasses. In the next process the last remains of the molasses were drained off: the percolation of water through clay was part of the process, and the product was hence called 'clayed' sugar.

in manner herein-after mentioned to be admissible as not being the Produce of Slave Labour, and which shall be imported into the United Kingdom either from the Country of its Growth or from some British Possession, having first been imported into such British Possession from the Country of its Growth, the following Duties; namely,

Brown, Muscovado, or Clayed, the Cwt.	1	14	0
Molasses, ¹ the Cwt.	1	3	9
The Produce of and imported from any British Possession, the Cwt.	0	9	0
Sugar, refined, the Cwt.	8	8	0
Candy, Brown, the Cwt.	5	12	0
„ White, the Cwt.	8	8	0

And so in proportion for any greater or less Quantity than a Hundred Weight, together with an additional Duty of Five *per Centum* on such aforesaid Rates of Duty. . . .

VII. And be it enacted, That with regard to Sugar the Growth of any Foreign Country, between which Country and Her Majesty there is now subsisting any Treaty or Convention binding Her Majesty to grant to such Country, either conditionally or unconditionally, the Privileges of the most favoured Nation, or to permit, either conditionally or unconditionally, the Produce of such Country to be imported into the United Kingdom at the Same Duties as are imposed upon the like Produce of any other Country, it shall be lawful for Her Majesty and She is hereby empowered from Time to Time, by any Order or Orders in Council, to declare that from and after a Day to be named in such Order, not earlier than the Tenth Day of November One thousand eight hundred and forty-four, Brown, Muscovado, or Clayed Sugars (not being refined) the Growth of such Country, in case such Treaty shall after the said Tenth Day of November continue to subsist, shall, if imported from such Country, or from any British Possession abroad, having been imported into such British Possession from such Country, be admitted to Entry for Consumption in the United Kingdom at the aforesaid Rate of Duty of One Pound Fourteen Shillings per Hundred Weight, and Five *per Centum* additional as aforesaid.² . . .

¹ Molasses is the liquor drained from the sugar in the process of 'curing' or crystallization. From it rum is made.

² The 10th of November was fixed as the date of the coming into operation of the Act because it was then that the existing most favoured nation treaty with Brazil expired; but Venezuela and the United States both claimed the treaty right to have sugar, grown though it was by slaves, admitted at the lower rate of duty. The claims were admitted, and Peel could only excuse this lapse from principle, after the arguments used in the House of Commons, on the ground that it was a very little one, neither country being likely to export any quantity worth mentioning.

ADDRESS OF LEGISLATIVE ASSEMBLY OF CANADA
[EXTRACT]

(*P. P.*, 1846, xxvii.)

MOST GRACIOUS SOVEREIGN,

We, your Majesty's dutiful and loyal subjects, the Commons of Canada in Parliament assembled, respectfully beg leave to address your Majesty on a subject of the highest importance to the inhabitants of this Province.

We assure your Majesty, that while we have seen with unmingled satisfaction the happiness and prosperity of the people of this colony advancing in steady and successful progression under that moderate system of protection of her staple productions, grain and lumber, which your Majesty and your Imperial Parliament have hitherto graciously secured to them, we feel that we should be wanting in our duty, as well to your Majesty as to our constituents, did we fail earnestly to represent to your Majesty that we view with serious apprehension and alarm, as detrimental to the best interests of this colony, the adoption of the proposed principle of commercial intercourse now under the consideration of the Imperial Parliament.

We cannot but fear that the abandonment of this protective principle, the very basis of the colonial commercial system, is not only calculated materially to retard the agricultural improvement of the country, and check its hitherto rising prosperity, but seriously to impair our ability to purchase the manufactured goods of Great Britain; a result alike prejudicial to this colony and the Parent State.

We feel truly grateful to your Majesty for enabling us, by guaranteeing the payment of £1,500,000¹, to undertake many valuable public improvements, which are now approaching to completion, and which under the existing laws would ultimately prove productive.¹ But should the duties on foreign and colonial produce entering the United Kingdom be assimilated, as at present proposed by your Majesty's Imperial Government, it is much to be apprehended that the agriculturists of this Province will be deprived of a fair and remunerative price for their surplus produce; and that, consequently, the increase of our staple products, which was reasonably anticipated, will be checked to such an extent as materially to lessen the prospect of our canals and other public works proving as productive as we had reason to expect.

¹ In the later thirties Upper Canadian finances had got into a parlous state, mainly because of heavy expenditure on public works, canals in particular, which it had not been possible to complete and render fully productive. As an inducement to the Upper Province to agree to the union policy, the British Government offered to guarantee a loan of £1,500,000 to enable the works to be completed and the interest on the existing debt to be reduced. The Guarantee Act was passed in 1842, with beneficial results.

We respectfully represent to your Majesty, that, situated as Canada is, and with a climate so severe as to leave barely one-half the year open for intercourse by the St. Lawrence with the mother country, the cost of transporting her products to market is much greater than is paid by the inhabitants of the United States; and that without a measure of protection, or some equivalent advantage, we cannot successfully compete with that country.

It therefore becomes our duty, as faithful subjects of your Majesty, to point out what we sincerely believe must be the result of measures which have for their object the repeal of the laws affording protection to the Canadian export trade. First, it will discourage those at present engaged in agricultural pursuits from extending their operations; secondly, it will prevent the influx of respectable emigrants from the mother country, who have for many years past settled in large numbers on the waste lands of the Province, and who by their industry and capital have materially contributed to that rapid advancement of the country which we have before noticed; and, lastly, it is much to be feared that, should the inhabitants of Canada, from the withdrawal of all protection to their staple products, find that they cannot successfully compete with their neighbours of the United States in the only market open to them, they will naturally and of necessity begin to doubt whether remaining a portion of the British Empire will be of that paramount advantage which they have hitherto found it to be. These, we humbly submit, are considerations of grave importance both to your Majesty and the people of this Province; and we trust we need not assure your Majesty that any change which would tend in the remotest degree to weaken the ties that have for so many years, and under trying circumstances, bound the people of Canada to that land which they are proud to call their mother country, would be viewed as the greatest misfortune which could befall them.

We would further remind your Majesty that while, in compliance with the recommendation of the Imperial Government, we have passed a law repealing all duty on American produce coming through our country for exportation, no similar advantage is accorded by the American Government to the people of this Province; but that duties, amounting in most cases to prohibition, are rigorously maintained by that Government on every article of ours entering into their ports. The disadvantage we must labour under in this respect is so apparent that we respectfully request your Majesty will be pleased to cause the necessary steps to be taken for opening a negotiation with the Government of the United States for the admission of our products into their ports on the same terms that theirs are admitted into those of Great Britain and this colony.

We also humbly request that your Majesty will favourably consider the justice of admitting the products of this Province generally into the Imperial ports free of duty, as the expense of transportation is in

itself all the protection which our fellow-subjects in the United Kingdom can reasonably expect as respects the imports from a colony situated at such a distance from the mother country, and with ports closed to commerce for so large a portion of the year. And we the more confidently appeal to your Majesty's justice upon this point as the relief that we seek in this particular is in strict accordance with the very principles upon which the changes that we deprecate are based, as well as to the assurance received through your Majesty's Secretary of State, that it is the desire of your Majesty's Government that the trade of Canada should in all respects approach as nearly to perfect freedom as the wishes of its inhabitants and the exigencies of the public revenue may permit.

(signed) A. N. MORIN,

Tuesday, 12th May 1846.

Speaker.

IO

DESPATCH FROM GLADSTONE TO CATHCART

(June 3rd, 1846) [EXTRACT] ¹

(*P. P.*, 1846, xxvii.)

Her Majesty's Government conceive that the protective principle cannot with justice be described as the universal basis, either of the general connexion between the United Kingdom and its colonies, or even of their commercial connexion. There is a large and important group of the colonies of this country, having a very extended commerce, and one of a peculiarly British character, in relation to which the protective system has at no time exercised a powerful influence, and in relation to which at present it has little more than a nominal existence. I speak of the Australian colonies: and it cannot fail to be remarked, that while these are the most distant, and therefore, according to the suppositions of many, the most in need of commercial preference, they have also made the most rapid progress, and have thus most effectually belied that necessity. It is true, indeed, that a part of their material prosperity may be ascribable to the supply of penal labour; but this is far from affording an explanation of the case, since perhaps the most remarkable instances of vigorous and rapid growth among the Australian possessions of Her Majesty have been instances in which penal labour has been altogether unknown. The energy of the colonists has, without doubt, under Divine Providence,

¹ Gladstone became Secretary of State for the Colonies in December 1845 when Peel formed his new Government. He had not a seat in the House, but he rendered good service to Great Britain by his defence of the new commercial policy in this and other despatches to the colonies. In other respects his six months' tenure of office was not particularly notable. But for several years afterwards he continued to take a particularly keen interest in colonial affairs.

been the main cause of their singular advancement; stimulated, but not overborne by distance, and aided, not repressed, by the enjoyment of commercial freedom. The same energies, with less disadvantage of distance to contend against, will, it may be confidently predicted, have a similar effect in developing the resources of British North America, and not with less, but rather with the more signal success, when capital, industry and skill shall be left to take their own spontaneous direction, and to turn to account, as individual prudence shall suggest, the abundant materials and instruments of wealth which the bounty of Heaven has bestowed.

Her Majesty's Government have been glad to find that the Assembly has viewed with an unmingled satisfaction the prosperity of Canada under the moderate system of protection which has hitherto prevailed; but the Assembly cannot fail to recollect, that all the progressive relaxations of that system, which for a series of years past have been introduced into the law, have been met and resisted by predictions of the ruin that it was honestly but erroneously conceived would follow them, and that those predictions have, with a remarkable uniformity, been disappointed. Experience cannot but suggest that a similar insecurity attaches to the renewal of the same expectations founded on the same arguments.

It is not for the sake of controversial or purely argumentative advantage that Her Majesty's Government refer to former apprehensions, and to the manner in which they have been dissipated by the event. A retrospect of this kind is calculated to throw clear and abundant light upon the real merits of the question. The fears which are now entertained have reference to the circumstance that it is proposed to remove all differential duty between Canadian and foreign corn. Is it then to be shown that the Canadian corn trade has prospered heretofore in proportion to the amount of such differential duty? Far otherwise. The law of 1828 diminished the difference in favour of Canada; the law of 1842 further and greatly diminished the difference in favour of Canada; the Law of 1843, which reduced the duty on Canadian wheat to one shilling per quarter, still left a much smaller difference in its favour, as against foreign wheat, than existed under either of the former Corn Laws. And yet the corn trade of Canada has grown and prospered; and its extension has, doubtless, contributed in no small degree to the happiness and prosperity of the people of the colony, which the Assembly, sharing in the unmingled satisfaction of Her Majesty and the British Parliament, has seen advancing in steady and successful progression. But this extension has taken place, not under protection secured from change, nor under protection fortified by successive increments, but contemporaneously with a series of changes involving its great diminution.

It appears to be the impression of the Assembly that some great revolution of prices is likely to occur, as the consequence of the pend-

ing changes in the law, which will deprive the Canadian farmer of all hope of remuneration for his surplus produce. But the Canadian farmer is advancing from year to year in capital and in science; and, to say nothing of the great advantages he cannot fail to derive from improved communications, it would surely be rash to assert, nor probably do the Assembly in their address intend to imply, that his industry must be paralysed unless he shall continue to receive the precise amount of average payment for his grain that he has hitherto received for it. Doubtless the alarm which has been excited has reference to the idea of some sudden, great and permanent reduction of price, to follow the repeal of the British Corn Law. Without pretending to estimate too nicely the momentary or the occasional effects of that measure, Her Majesty's Government cannot but admit that they could better appreciate at least certain presumptive, though far from demonstrative, grounds for the alarm of the Canadian agriculturist in regard to the future fortunes of the colony if they shared in such an anticipation. To some reduction of average and usual price, from the removal of artificial restraints, they are disposed to look forward; but when they consider the steady and rapid growth of population in the corn-producing countries of the globe, they cannot but be persuaded that it would be unwise, whether in the friends or the opponents of commercial relaxation, to recommend or dissuade it on the ground of any great revolution in permanent prices to be operated by it; and their expectations of advantage, sanguine as these anticipations are, have reference in a greater degree to the increased steadiness of the market, and to the vigour which general trade will derive from the removal of restraints upon the exchange of commodities, and agriculture, from the cessation of all artificial influence disturbing the balance of its several pursuits, and from the wholesome stimulus that competition, which in farming pursuits can scarcely become overwrought, rarely fails to impart to industry.

I am unwilling to repeat at length the arguments which I have addressed to your Lordship in my despatch, No. 66, of the 18th May, with respect to the other great subject of the alarm of the Assembly, namely, the trade in lumber. When, however, we revert to the year 1842, it cannot but be acknowledged that this was the case of a trade peculiarly artificial as it stood under the former law. The reduction, though graduated, was decisive; perhaps in no case has it been more so; and certainly in no case have more uniform, confident or sincere prophecies of ruin been hazarded by the opponents of the change. The result is, that the export of timber from British North America to this country attained, during the last year, to a height which it had never reached under the more protective law. I do not mean that the withdrawal of protection was either the exclusive or even the principal direct cause of this prosperity; although there cannot be a doubt that many trades have to refer their vigour to the fact that the absence of

artificial support has in their case given free operation to the stimulus necessary for the development of natural and permanent resources. Increased demand in the United Kingdom has, without doubt, been the main and the immediate cause of the increased export of wood from British North America; but it is the conviction of Her Majesty's Government that such increased demand was itself referable in no small degree to the relaxations of our commercial law; and therefore, in its due proportion, the growth of the timber trade is truly and justly, even if circuitously, to be ascribed to that very diminution of protection from which its ruin had been anticipated. We are now to look forward with hope to a further increase of the consuming power of this country; a further encouragement to the use of timber as compared with competing articles capable of being applied to the same purposes; a further encouragement to the use of Canadian timber, in combination with the wood of the Baltic, for those objects in regard to which the consumption of the one directly stimulates the consumption of the other. Is it too much to hope that causes so similar may produce like effects; and that the caution with which Parliament has proceeded in the gradual reduction of the timber duties to a moderate standard may be again rewarded by the satisfaction with which it will witness a further growth in the wood trade of Canada?

Her Majesty's Government, therefore, cannot, on the part of the Imperial Exchequer, share in the fear that increased freedom of trade will have the effect of crippling the revenues of those important public works which are designed to facilitate the transit of the produce of Canada by the St. Lawrence to the sea. They can by no means subscribe to the opinion that the comparative dearth of this route is an established fact; and they likewise feel, that if they did subscribe to that opinion, although it might corroborate the propriety of the course they have pursued in suggesting to Parliament the interposition of an interval before entire freedom shall be given to the corn trade, it could do no more; it could not induce them to ask, nor Parliament to grant, nor, they are certain, could it induce the people of Canada to desire, that the market of their farm produce should be maintained by means of a perpetual tax upon the people of England. In referring to the unchecked competition which, so far as British law is concerned, will be established between colonial and foreign corn by the repeal of the Corn Law, it perhaps may not have occurred to the Assembly, that British law alone cannot suffice to establish this competition. The price which the colonial and foreign exporters of corn respectively will obtain for their grain in Great Britain, must always be materially affected by the comparative degrees of facility which may be afforded in the country of the one and of the other for the introduction of those British goods by which payment for the corn must substantially be made. British goods are admitted into Canada at very low, into the American Union at very high, import duties. The effect of this is not

merely to give to the British exporter a better position in the Canadian market than in that of the United States, but to enable him to give a better price for the commodity he purchases in return, and therefore to give to the corn trade of Canada a corresponding advantage, so long as the present tariffs continue, over that of the United States.

With respect to that portion of the address which prays Her Majesty to invite the Government of the United States to establish an equality of trade between the dominions of the Republic and the British North American colonies, I am commanded to instruct your Lordship to assure the Assembly that Her Majesty will readily cause directions to be given to Her Minister at Washington to avail himself of the earliest suitable opportunity to press this important subject on the notice of that Government, and that it will afford Her Majesty the most sincere satisfaction if any communication which may hereafter be held for this purpose shall have the effect which is desired by Her faithful Commons of Canada.¹

Her Majesty's Government have, as may be known to the Assembly, on several occasions endeavoured to make arrangements with foreign powers for the mutual relaxation of tariffs; and similar attempts have taken place among foreign powers, one with the other, but almost uniformly with ill success. Whatever arguments may be used to show the great increase of benefit that would accrue on both sides if states could have been induced to act simultaneously for this purpose, experience has sufficiently shown the difficulty of effecting these combined operations upon matters which are properly of domestic concern, and has suggested the wisdom of securing the incomplete advantage which depends upon our own free agency alone, rather than of foregoing it in the vain endeavour to realize benefits larger indeed, but not within our reach. Should the Government of the United States continue to maintain the scale of import duties now in force upon its frontier, Her Majesty's Government will view with regret a policy injurious to Canada; but they will reflect with satisfaction on the prevalence of laws more favourable to commerce on the Canadian side, and will anticipate from those laws both a direct benefit to the people and trade of the Province, and the further advantage which a consistent example given by this country and by its colonies will, as they believe, not fail to realize in disposing foreign states towards the removal of restrictions on trade.

With respect to that part of the address which relates to the duty of 1s. per quarter, which it is proposed to charge on all wheat imported into England after the repeal of the Corn Law, I am to refer your Lordship to my despatch, No. 56, of the 18th April, on the same

¹ On June 18 Lord Aberdeen sent instructions to the Minister at Washington to bring the matter under the consideration of the United States Government at the first favourable opportunity. At the end of the year negotiations began, though for long they remained without result.

subject. From the purport of that despatch it would of course be even more difficult to recede at a period when the Bill introduced into the House of Commons by the advisers of the Crown has passed through all its stages in that House, and has been affirmed, as to its principle, on the second reading, by the House of Lords.

It is necessary for me here to offer an explanation with regard to an expression of mine, which appears to have given rise to misapprehension. I have stated to your Lordship, in a previous despatch, that Her Majesty's Government desire that the trade of Canada should in all respects approach as near to perfect freedom as the dispositions of its inhabitants and the exigencies of the public revenue there may permit; and from this it is inferred that the amount of 1s. per quarter, which has been adopted for a long period in this country as the standard of a nominal duty upon corn, ought to be removed. But the language which I employed had reference to the trade of Canada as affected by laws applicable in her own markets and on her own waters. Indeed, if the allusion had been to a rigid and perfect equality of trade in the ports and markets of this country, its first and most important bearing would, I apprehend, have been, not upon the nominal duty of 1s., which it is proposed to retain upon colonial in common with foreign corn, but rather upon the very considerable duties of 15s. and 18s. respectively, which, as against nominal duties of 1s. and 2s. on Canadian timber and deals, it is proposed to continue to charge on the corresponding foreign articles.

Her Majesty's Government, in the discharge of their duty to the Crown and to the people of this country, and likewise to the empire at large, have not felt themselves to be at liberty to advise Her Majesty to pass by the address of Her Canadian Assembly with a brief or merely formal answer, although the advanced stage at which the deliberations of Parliament have now arrived might have afforded at least a technical justification for such a course. They have thought a more frank and full exposition of their views of this great question in its bearings upon Canada was due to the important body from which the address proceeds, and from which they are well assured may be anticipated the most candid consideration even of arguments opposed to their own. It is due especially on account of the importance of that body and of the province of Canada; but, even in the case of the smallest portion of Her subjects, I have it in command to say that it would equally have been the desire of Her Majesty that such a frank exposition of the policy of Her Government should be made. Her Majesty does not recognize the distinction between Her nearer and Her more remote subjects with reference to a matter so nearly touching Her relation towards them, and the duties and the sentiments of consideration and affection which it involves. Nor can She recognize in this view any distinction between the more and the less powerful, particularly at a time when Her Parliament is engaged

in the discussion of measures which are recommended to its notice especially upon the ground that they tend to improve the condition of the most numerous and the least opulent classes of Her people.

It would indeed be a source of the greatest pain to Her Majesty's Government if they could share in the impression that the connexion between this country and Canada derived its vitality from no other source than from the exchange of commercial preferences. If it were so, it might appear to be a relation consisting in the exchange not of benefits but of burdens; if it were so, it would suggest the idea that the connexion itself had reached or was about to reach the legitimate term of its existence. But Her Majesty's Government will augur for it a longer duration, founded upon a larger and firmer basis,—upon protection rendered from the one side, and allegiance freely and loyally returned from the other,—upon common traditions of the past, and hopes of the future,—upon resemblances in origin, in laws, and in manners,—in what inwardly binds men and communities of men together, as well as in the close association of those material interests which, as Her Majesty's Government are convinced, are destined not to recede but to advance, not to be severed, but to be more closely and healthfully combined under the quickening influences of increased commercial freedom.

I have, &c.

(signed) W. E. GLADSTONE.

II

SUGAR DUTIES ACT, 1846 [EXTRACT]

(9 & 10 *Vict.*, *cap.* LXIII.)

[Duties to be levied.]

From and after the passing of this Act,—

On Sugar or Molasses the Growth and Produce of any British Possession in America, or of any British Possession within the Limits of the East India Company's Charter, into which the Importation of Foreign Sugar is prohibited, and imported from thence, the Duties following; (that is to say,) £ s. d.

Candy, Brown or White, Double Refined Sugar, or Sugar equal in Quality to Double Refined, for every Cwt.	1	1	0
Other Refined Sugar, or Sugar rendered by any Process equal in Quality thereto, for every Cwt.	0	18	8
White Clayed Sugar, or Sugar rendered by any Process equal in Quality to White Clayed, not being Refined, for every Cwt.	0	16	4
Brown Sugar, being Muscovado or Clayed, or any other Sugar not being equal in Quality to White Clayed, for every Cwt.	0	14	0
Molasses, for every Cwt.	0	5	3

And so in proportion for any greater or less Quantity than a Hundred Weight.

And from and after the respective Days next herein-after mentioned,—

On Sugar or Molasses the Growth and Produce of any Foreign Country:

	From and after the passing of this Act to 5 July 1847 inclusive.	From and after 5 July 1847 to 5 July 1848 inclusive.	From and after 5 July 1848 to 5 July 1849 inclusive.	From and after 5 July 1849 to 5 July 1850 inclusive.	From and after 5 July 1850 to 5 July 1851 inclusive.	From and after 5 July 1851
	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	
Candy, Brown or White, Double Refined Sugar, or Sugar equal in Quality to Double Refined, for every Cwt.	1 11 6	1 10 0	1 7 9	1 5 6	1 3 3	The same Duties as on Candy, Sugar, and Molasses the Produce of British Colonies.
Other Refined Sugar, or Sugar rendered by any Process equal in Quality thereto, for every Cwt.	1 8 0	1 6 8	1 4 8	1 2 8	1 0 8	
White Clayed Sugar, or Sugar rendered by any Process equal in Quality to White Clayed, not being Refined, for every Cwt.	1 4 6	1 3 4	1 1 7	0 19 10	0 18 1	
Brown Sugar, being Muscovado or Clayed, or any other Sugar, not being equal in Quality to White Clayed, for every Cwt.	1 1 0	1 0 0	0 18 6	0 17 0	0 15 6	
Molasses, for every Cwt.	0 7 10	0 7 6	0 6 11	0 6 4	0 5 9	

12

BRITISH POSSESSIONS ACT, 1846

(9 & 10 Vict., cap. xciv.)

An Act to enable the Legislatures of certain British Possessions to reduce or repeal certain Duties of Customs.

‘Whereas by an Act passed in the Session of Parliament holden in the Eighth and Ninth Years of the Reign of Her present Majesty, intituled *An Act to regulate the Trade of the British Possessions abroad* (8 & 9 Vict., cap. 93),¹ certain Duties of Customs set forth in a certain

¹ The Act 8 & 9 Vict., cap. 93, was merely a consolidating Act. The last of the Possessions Acts to introduce important changes had been that of 1842. See above, p. 329, note 1.

Table in the said Act contained are imposed upon the Importation into any of the British Possessions in America, or into the Island of Mauritius, of the several Articles therein mentioned, not being the Growth, Produce, or Manufacture of the United Kingdom, or of the British Possessions therein enumerated, and a certain Duty of Ten Pounds for every One hundred Pounds of the Value thereof is imposed upon the Importation thereinto of certain Sugar refined in Bond in the United Kingdom: And whereas by the said Act it is enacted, that all Laws, Bye Laws, Usages, or Customs which shall be in practice, or endeavoured or pretended to be in force or practice, in any of the British Possessions in America, which are in anywise repugnant to the said Act, or to any Act of Parliament made or to be made in the United Kingdom, so far as such Act shall relate to and mention the said Possessions, are and shall be null and void to all Intents and Purposes whatsoever: And whereas it is expedient to enable the Legislatures or other proper legislative Authorities in the said British Possessions, with the Assent of Her Majesty in Council, to reduce or repeal all or any of such Duties of Customs as aforesaid, so far as the same may be in force in such Possessions respectively: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That if and whenever the Legislature or other proper legislative Authority of any of the said British Possessions in America or the Mauritius make or pass any Act or Ordinance, Acts or Ordinances, reducing or repealing all or any of the said Duties of Customs so imposed as aforesaid by the said recited Act upon any Articles imported into such Possession, and if Her Majesty, by and with the Advice of Her Privy Council, assent to such Act or Ordinance, Acts or Ordinances, such Duties of Customs shall, upon the Proclamation of such Assent in the Colony, or at any Time thereafter which may be fixed by such Act or Ordinance, be so reduced or repealed in such Possession as if such Reduction or Repeal had been effected by an Act or Acts of the Imperial Legislature, any thing in any Act to the contrary thereof notwithstanding.¹

II. And be it enacted, That all such Acts and Ordinances shall be laid before both Houses of Parliament by One of Her Majesty's Principal Secretaries of State, within Thirty Days after Her Majesty shall have assented thereunto, if Parliament be then sitting, or if not, then within Thirty Days after the next Meeting of Parliament.

¹ Note that it was left to the Colonial Legislatures to repeal the duties. Mr. Goulburn, Peel's Chancellor of the Exchequer, opposed the Bill on the ground that it gave away the principle that the regulation of colonial trade was a matter for the Imperial Parliament; but Sir C. Wood and Lord J. Russell pointed out that it was impossible that Parliament should take steps, almost without notice, which might seriously derange the finances of many of the colonies.

SUGAR DUTIES ACT, 1848 [EXTRACT]

(11 & 12 Vict., cap. xcvii.)

[Duties on Sugar and Molasses imposed by 9 & 10 Vict., c. 63 repealed, and in lieu thereof Duties herein mentioned to be levied.]

On Sugar or Molasses the Growth and Produce of any British Possession into which the Importation of Foreign Sugar is prohibited, being imported from any such Possession, the Duties following; (that is to say,)

	From and after 10 July 1848 to 5 July 1849 inclusive.	From and after 5 July 1849 to 5 July 1850 inclusive.	From and after 5 July 1850 to 5 July 1851 inclusive.	From and after 5 July 1851.
	£ s. d.	£ s. d.	£ s. d.	£ s. d.
Candy, Brown or White, Refined Sugar, or Sugar rendered by any Process equal in Quality thereto, for every Cwt.	0 17 4	0 16 0	0 14 8	0 13 4
White Clayed Sugar, or Sugar rendered by any Process equal in Quality to White Clayed, not being Refined, or equal to Refined, for every Cwt.	0 15 2	0 14 0	0 12 10	0 11 8
Muscovado, or any other Sugar, not being equal in Quality to White Clayed, for every Cwt.	0 13 0	0 12 0	0 11 0	0 10 0
Molasses, for every Cwt.	0 4 10	0 4 6	0 4 2	0 3 9

On Sugar or Molasses the Growth and Produce of any Foreign Country, and on all Sugar or Molasses not otherwise charged with Duty, the Duties following; (that is to say,)

	From and after 10 July 1848 to 5 July 1849 in- clusive.	From and after 5 July 1849 to 5 July 1850 in- clusive.	From and after 5 July 1850 to 5 July 1851 in- clusive.	From and after 5 July 1851 to 5 July 1852 in- clusive.	From and after 5 July 1852 to 5 July 1853 in- clusive.	From and after 5 July 1853 to 5 July 1854 in- clusive.	From and after 5 July 1854.
	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
Candy, Brown or White, Refined Sugar, or Sugar rendered by any Process equal in Quality thereto, for every Cwt.	1 6 8	1 4 8	1 2 8	1 0 8	0 19 4	0 17 4	0 13 4
White Clayed Sugar, or Sugar rendered by any Process equal in Quality to White Clayed, not being Refined, or equal to Refined, for every Cwt.	1 1 7	0 19 10	0 18 1	0 16 4	0 15 2	0 14 0	0 11 8
Brown Clayed Sugar, or Sugar rendered by any Process equal in Quality to Brown Clayed, and not equal to White Clayed, for every Cwt.	1 0 0	0 18 6	0 17 0	0 15 6	0 14 6	0 13 0	0 10 0
Muscovado, or any other Sugar, not being equal in Quality to Brown Clayed Sugar, for every Cwt.	0 18 6	0 17 0	0 15 6	0 14 6	0 13 0	0 12 0	0 10 0
Molasses, for every Cwt.	0 6 11	0 6 4	0 5 9	0 5 3	0 4 10	0 4 6	0 3 9

MEMORANDUM OF EXECUTIVE COUNCIL OF CANADA
(May 1848) [EXTRACT]

(*P. P.*, 1847-8, lix.)

To his Excellency the Right Honourable the Earl of Elgin,
Governor-General of British North America, etc., etc.

May it please your Excellency,

The Committee of the Executive Council feeling great anxiety on the subject of contemplated proposals for the amelioration of the Navigation Laws, as applicable to this colony, and also respecting the navigation of the St. Lawrence River, proposed to be thrown open to American vessels, both which subjects have received careful consideration of the Legislative Assembly, and on which a great unanimity of opinion appears to prevail in this colony, are desirous of expressing their views to your Excellency for the consideration of Her Majesty's Government.

So long as it was a part of the policy of the empire to give a preference to colonial products in the markets of the United Kingdom, the monopoly of the carrying-trade was with great consistency and justice given to British shipping. The advantage to the colonists in the British market, afforded by means of protecting duties, generally enabled them to overlook the disadvantage of having the markets of the United States closed to them by duties levied in that country in favour of native productions; of having all competition in the import and export carrying-trade excluded from their ports; of being forced to employ British ships, making a voyage from England without freight, in carrying the heavy exports of the country to market, the voyage to England necessarily bearing the expense of the voyage to Canada; while foreign vessels which might have resorted to the ports of Canada were excluded from taking the products of the country to the British market, and consequently had only the profits of one voyage to pay the expenses of two. The advantage and disadvantage of this system of protection and monopoly alternated according to circumstances, but on the whole, the colony, while her products were protected in the British market, did not complain of the monopoly in favour of British shipping, which seemed to be an essential point in the policy of the trade of the empire.

The country of Canada at all times laboured under a disadvantage, as compared with the more southern portions of America, in having her ports closed by the ice during a considerable part of the year. The shipping ports are also at a great distance from the open sea, and the navigation, after entering the Gulf of St. Lawrence, was liable to be tedious, and at the early and late periods of the season

dangerous. Freights and insurances were thereby enhanced, and it was not always that the high protecting duties of the British Corn Laws placed Canadians on as favourable a footing as their American neighbours.

To counterbalance these natural disadvantages, the River St. Lawrence afforded a splendid inland navigation from the interior, superior to that by the Mississippi, because of the climate through which the articles of export had to pass, and superior to the long and comparatively narrow navigation of the Erie Canal, unavoidably tedious and expensive.

The enterprize and energies of the colony have been for a long time almost exclusively directed to the important objects of improving the internal navigation of the St. Lawrence from Lake Erie to Quebec, so as to place it in a state of cheapness and efficiency which would make that route to a port of embarkation for a sea voyage advantageous beyond all comparison with the internal communications of the United States, and by that means to counterbalance the more difficult and expensive sea navigation. The Government and Legislature of the colony have also endeavoured to make the navigation below Quebec safe and easy by means of numerous lighthouses well and expensively kept up. These efforts, though beyond the means and resources of a small and new community, have been successful. The Welland Canal, between Lakes Erie and Ontario, has been put in full operation, though not quite completed, at an expense of nearly £1,500,000. The works on the St. Lawrence between Kingston and Montreal have likewise been opened, forming a series of magnificent canals, by means of which the rapids of the Great River are conquered at the expense of nearly £1,500,000, and thus, steam-boats and vessels of great burden are enabled to pass up and down the river cheaply, safely and rapidly. Sixty-five thousand pounds has been expended in an endeavour to deepen Lake St. Peter, between Montreal and Quebec, for the purpose of enabling the largest ships to proceed to the former port; and thus by a series of undertakings which would do honour to the enterprize and industry of a nation, it was hoped for the colony that she would have been enabled, not merely to rival, but to surpass the enterprising and active people of the neighbouring States, and to create amongst her inhabitants a corresponding degree of commercial greatness and prosperity.

This, in the view of the projectors of the public works in Canada, as well as in the opinion of men of the best judgment in the northern states of America, was far from being a question of merely theoretical rivalry. It was always considered questionable whether the import and export trade of Canada would in itself make the tolls arising from the canals sufficient to remunerate the public treasury for the great expenditure. But while it was manifestly essential to the agricultural and mercantile prosperity of the country, that the means of access to

the sea should be improved, it was supposed that the superiority of the line of communication would induce the passage of American trade down and up our canals so as to make them remunerative and profitable.

This supposition has been realized in the case of the Welland Canal. Since the opening of that work, the Americans have been permitted the free navigation of the canal through the Canadian territory, and as that canal is a short communication between the two great lakes, admitting the passage of large vessels, and as it has the effect of substituting a hundred miles of lake navigation in these vessels for boat navigation on the Erie Canal, the Welland is used extensively for the American trade, which instead of entering the American Erie Canal at Buffalo, proceeds down Lake Ontario to Oswego, and there is transferred to the boat navigation of the Erie Canal for transport to New York. Thus a large portion of the revenue from the Welland Canal is paid by the American trade, arising from a free navigation of a part of the internal waters of Canada, and thus the western portion of Canada enjoys the inestimable benefit of a navigation supported to a great extent by foreign commerce.

The superiority of the Canadian over the American line of communication, may be exemplified by the following rate of cost of transport from Cleveland in the State of Ohio on Lake Erie to New York, taking the cheapest line through the Canadian Welland Canal, and the rate of transport to Montreal from the same port on Lake Erie down the St. Lawrence.

The rate to New York being on each barrel of flour,	s.	d.
in currency	4	6
To Montreal	2	9
	<hr/>	
	1	9

This difference being in favour of the Canadian inland navigation over the American.

If the products of the western country of the United States could be transported to the sea more cheaply through Canada than through the American territory, there can be no question but the Canadian route would be preferred, and the Canadian canals would engross the carrying-trade of the north-western States of America. The possession of even a portion of this trade would place this country in a state of financial prosperity.

But if, on the other hand, the advantage of this perfect inland navigation is more than counterbalanced by the rate of freight from Quebec and Montreal, the people of Western Canada having no protection in the English market, by using the Canadian line of communication, will send their whole produce by way of New York, as well as import all foreign articles of consumption by the same route,

and thus, not only will the vast expenditure upon the internal navigation of Canada be wasted, and the debt incurred thereby become a hopeless burden, but the trade of the commercial cities of Montreal and Quebec, which was rapidly rising into importance, must be completely ruined.

While the province enjoyed protection in the British market, this unhappy result could not have arrived, because the protection was generally sufficient to prevent the owners from divesting the Canadian produce of its British character, and it could not become available for the home market of America unless upon payment of heavy duty. Even with regard to American produce, the provision in the Corn Law which enabled American wheat and flour to enjoy the same protection as Canadian upon being exported through Canada, on payment of 3s. sterling per quarter duty in the province, was, at most times, a sufficient inducement for many Americans to make shipments to Montreal, as well as for Canadians to make purchases in the United States; but the protection being now removed, the question is one of mere cheapness of transport, and, taking the average of the last four years, the cheapness of freights will be found very much in favour of New York over Montreal. The freight on a barrel of flour from New York and Montreal respectively to Liverpool in these years, may be stated as follows—

						Montreal.		New York.	
						s.	d.	s.	d.
1844	.	.	.	.	.	4	6	1	8
1845	.	.	.	.	.	4	8	2	0
1846	.	.	.	.	.	5	1½	2	6½
1847	.	.	.	.	.	6	0	2	0
Average						5	1	2	1

Showing an advantage to New York of 3s. sterling per barrel, and if there be deducted from this the advantage which Canada enjoys in internal navigation, amounting to 1s. 6d. sterling, there will still remain in favour of New York 1s. 6d. on each barrel of flour, quite sufficient to turn the whole export trade into that channel.

As the United States now admit the transit of Canadian produce through their territory, the only disadvantage it encounters at New York, is the necessity which arises under the Imperial Act 8 & 9 Vict., c. 88, s. 4,¹ which would seem to forbid its being imported into England in foreign ships; but as freight in British from New York to England is no higher than the freight in American ships, this restriction would seem to have no appreciable influence on the question of transmission through Canada or the United States.

¹ This was the most recent of the Navigation Acts. Section 4 provided that goods, the produce of Asia, Africa, or America, should not be imported into the United Kingdom in foreign ships except those of the producing country: there were a few exceptions of minor importance.

The consequence of this state of circumstances is no longer a matter of apprehension; its reality is severely felt in Montreal and the eastern portions of Canada. For some time past the import trade of Western Canada, which by means of protecting duties in favour of British ships and British goods, was forced to come by the St. Lawrence, has been changing its direction, and Montreal, which supplied the whole western country, is being deserted by the western merchants. The new Customs Law of the Province, while it equalizes duties and thus enables the consumer to purchase in the cheapest market, vastly increases the evil to the former importing cities, and a very large proportion of the export trade of Canada has this year taken the direction of New York. Hence arises the present suffering, and a feeling of serious apprehension for the future, lest the great public works of the St. Lawrence should be unused and unprofitable, and the commercial connexion which existed for so many years between Western and Eastern Canada should be altogether cut off.

The people of Canada are not inclined, by a system of protection, to force their own trade in any particular channel; following the example of the mother country, they have been compelled, in a great measure, to adopt the maxims of free trade, which have lately prevailed in England. As regards the carrying-trade of the North-western American States, the Canadians can have no means of obtaining its passage through their territory, but by superior advantages in the way of cheapness of transit. They have done everything for this purpose which great enterprize and expenditure could do. They have succeeded, so far as their means could succeed, and they possess now a line of communication more rapid and more cheap from the interior to the sea-port, than any existing in the United States. The whole question then is confined to the comparative advantages of shipment from Quebec or Montreal, or New York. If these ports can be nearly equalized in respect to freights to England, Canada will have succeeded; if the disparity continues as it now exists, all the efforts of Canada will have been unavailing.

It is represented that the high rate of freight between Montreal and the United Kingdom, is owing to the limited number of ships employed in the import trade of Canada. In the spring and in the latter end of the summer, the ships composing what are called the spring and fall fleets arrive; these are good ships, and so long as they are in port wanting freight the rate is comparatively moderate; but in the interval, being the middle of summer, when most of the western produce arrives for shipment, an inferior class of ships only offer, which not only deliver their cargoes in bad condition, but charge exorbitant freights, according to the quantity of produce for shipment. The rate of freight is represented to have fluctuated in Montreal in the same season, between 3*s.* 6*d.* and 7*s.* 6*d.* per barrel; and it is said also, that the higher rate, that is to say, from 6*s.* to 7*s.* 6*d.*

per barrel, has been paid in Montreal, at the same time that freight has been offered to be borne by foreign ships at New York as low as from 1s. to 1s. 6d. per barrel; at this time, an offer of 1s. 6d. per barrel extra would have brought any number of ships round from the American sea-ports, but the Navigation Laws interposed to the ruin of the owners of the produce. This fluctuation and extravagant rate of freight, and the employment of inferior vessels, could not have occurred were the Canadian merchant able to look for ships amongst those in the American ports seeking freight to Europe; the latter having made their outward profitable voyage could afford to carry Canadian produce at a lower rate than ships which came out in ballast, and there would be no opportunity of exacting extortionate freights from the shipper, who now is without remedy.

During the temporary suspension of the Navigation Laws last year,¹ 22 ships arrived from Bremen, at the port of Montreal, loaded with emigrants intended for the United States, who chose the route through Canada for its greater facility and cheapness. These ships were enabled to take cargoes for the United Kingdom; and were the same facilities continued, there can be no doubt but the great German emigration to the United States would be directed through Canada. The number of passengers from Bremen to New York last year was 67,142. If 200 ships employed in the same trade were to come to the Canadian ports, it is easy to see what an effect their coming would have upon the rate of freights to England. This is but one instance of many which might be expected, were foreign vessels permitted to resort to the Canadian ports. These ships are admirably adapted to the carriage of wheat and flour, and the competition produced by their presence would not only tend to equalize the freights from Canada to those from the United States, but the ships would deliver their cargoes in good condition, and the shippers would avoid the damages occasioned by the use of inferior vessels, which are thought not to be over-estimated at five per cent. in the average on shipments of produce from Canada.

The American merchants of the West are no doubt anxious to avail themselves of the facilities afforded by the River St. Lawrence. Were their vessels permitted to come down to Montreal and Quebec, there to meet American or foreign ships to take their freight to Europe or elsewhere, it is thought that a most extensive and profitable commerce through Canada would immediately follow. The American vessels now confined to the navigation of the lakes and upper part of the river, would then be enabled to come to a port of embarkation for sea, without transshipment of cargo. It is confidently anticipated that a great portion of the importations for the north-western portion

¹ The Navigation Acts were partially suspended in 1847, on account of the Irish famine, foreign vessels being allowed to carry grain or similar foodstuffs to any port in the United Kingdom for home consumption.

of the United States would take place through the same channel; and thus, instead of the lower ports of Canada being deserted, they would at once assume the position, as commercial depôts, to which their location upon the great river outlet of northern America seems to entitle them. The great works of the St. Lawrence, instead of being idle and unproductive, through the means of protective regulations which produce no benefit in any quarter, would then become a means of enriching a country which the expense of their construction has now exhausted.

Connected with this subject of the free navigation of the St. Lawrence west of Quebec, which the Americans are desirous to procure, is a corresponding desire on the part of the Canadian farmers to avail themselves of the American home market, whenever it affords superior prices to those derived from exportation to Europe. The price of wheat and flour in the Eastern States intended for home consumption, is often much higher than the price in Canada for exportation; when this happens to be the case, it would be an immense advantage to the Canadian agriculturist, could he export his produce for consumption in the United States. This, however, he is prevented from doing, by a protecting duty of a quarter of a dollar a bushel upon wheat. Efforts have been made in the United States to abolish this duty, but the advocates of its abolition have been defeated by the cry for protection on the part of American farmers, and met also by a difficulty as to the 'most favoured nation clause', in treaties with foreign powers, which might make a relaxation in favour of Canada, require a like favour to all nations with whom such treaties existed. It is thought, that if the free navigation of the St. Lawrence were offered to the American Government, in return for the abolition of the protecting duty, the one measure to be co-existent with the other, the American Legislature, upon that consideration, would be induced to abolish the protective duty; while the abolishment being a matter of reciprocal treaty, all difficulty arising from the arrangement as to the commercial relations of the United States with foreign countries might be avoided. Thus, two objects in which Canada is deeply interested might be obtained at once, through the interest which Americans feel in one; and there is reason to believe that this is not a mere supposition, but that it has been the opinion of leading men in the United States, who are the advocates of free-trade principles, and who think that popular objections to the admission of Canadian wheat on the same terms that American wheat is admitted into England, would be obviated by permitting to American vessels the free navigation of the River St. Lawrence above Quebec. . . .

LETTER FROM ELGIN TO GREY [EXTRACT]

*(Elgin-Grey Correspondence: Canadian Archives.)**Private.*

Toronto, Dec. 17, 1849.

MY DEAR GREY,

Your letter of Nov. 23rd reached me yesterday. However creditable it may be to Lord John's foresight that he anticipated the disastrous effects of Lord Stanley's legislation¹ on Canadian Interests, rely upon it this fact will not reconcile Canadians to the consequences.—Followed by the Legislation of 1846 it has ruined a large proportion of the most enterprising members of the community by tempting them to invest their capital in Mills and Warehouses and hoisting up the value of land & its produce only to topple it down again. Judging from the tone of the English Press I am disposed to fear that there is in England an entire misunderstanding with respect to the state of opinion in Canada on these questions, and I hardly think from your letter that you appreciate it correctly. My own impression is that as regards the economy of the question opinion in the Province is decidedly in favor of annexation—that it is generally believed that the additional value which would thereby be given to property would more than compensate for the additional taxation it would entail; against these views the *Globe* and *Pilot*,² the organs of the Ministry, and some other Journals are struggling manfully but I think nevertheless they are still the popular creed.—It is not for me to dispute the point with free traders when they allege that all parts of the Empire are suffering from the effects of free trade and that Canadians must take their chance with others. But I must be permitted to remark that the Canadian case differs from others both as respects the immediate cause of the suffering, and still more as respects the means which the sufferers possess of finding for themselves a way of escape. As to the former point I have only to say that however severe the pressure in other cases attendant on the transition from protection to free Trade, there is none which presents so peculiar a specimen of legislative legerdemain as the Canadian where an interest was created in 1843 by a Parliament in which the parties affected had no voice, only to be knocked down by the same Parliament in 1846. But it is the latter consideration which constitutes the specialty of the Canadian case. What in point of fact *can* the other suffering interests of which 'the Times' writes do? Mr. H. Drummond³ may fraternize

¹ I.e. the Canada Corn Act (see above, No. 5). It was of course repealed by Peel's measure of 1846.

² The *Toronto Globe*, edited by George Brown, was probably the most influential paper in the whole of Canada. It was at this time a strong supporter of the Baldwin-Lafontaine Government. The *Pilot* was their chief organ in Montreal.

³ Henry Drummond, grandson of Lord Melville, was a wealthy and somewhat

with Bright,—my old friends in Jamaica may refuse to pay the Chief Justice his salary¹—there may be a great deal of grumbling, and a gradual move towards republicanism or even communism—but this is an operose and empirical process,—the parties engaged in it are full of misgivings, and their ranks at every step in advance are thinned by desertion.—Not so with the Canadians—The remedy offered to them, such as it is, is perfectly definite and intelligible. They are invited to form a part of a community which is neither suffering nor free trading—which never makes a bargain without getting at least twice as much as it gives—(as, for instance, in this matter of the Navigation Laws—until Canada is annexed American ships will be able to carry freight between Quebec and London—but, after annexation, will British ships be able to do the same between Quebec & New York?) a community the members of which have been within the last few weeks pouring into their multifarious places of worship to thank God that they are exempt from the ills which afflict other men,—from those more especially which afflict their despised neighbours the inhabitants of North America who have remained faithful to the Country which planted them.—

Now I believe that if these facts be ignored, it is quite impossible to understand rightly the present state of opinion in Canada or to determine wisely the course which the British Gov^t. and Par^t. ought to pursue. It may suit the policy of the English Free Trade Press to represent the difficulties of Canada as the consequence of having a fool for a Gov^r. Gen^l. but, if it be permitted me to express an opinion on a matter of so much delicacy, I venture to doubt whether it would be safe to act on this hypothesis. My conviction on the contrary is, that motives of self interest of a very gross and palpable description are suggesting treasonable courses to the Canadian mind at present, and that it is a political sentiment, a feeling of gratitude for what has been done and suffered this year in the cause of Canadian self Government which is neutralising these suggestions. I am quite sure that there was much more reason to fear annexation a few weeks before the Rebellion Losses Bill was sanctioned when Sir George Simpson² who had just returned from Washington professed to me that he believed it to be imminent (speaking with an evident leaning that way himself) and when I know from other sources that numbers of the liberal Party were wavering,³ than there is at this hour. I believe that the mass of the population of both origins have a faith in eccentric M.P., a kind of independent Tory in politics, and a well-known House of Commons figure.

¹ A reference to the dispute in Jamaica between the Executive Government and the House of Assembly, which paralysed public business there in the latter part of 1848 and 1849. It arose out of the withdrawal of Protection from West Indian sugar by the Act of 1846 and the consequent distress of the planters.

² Sir George Simpson was administrator of the Hudson's Bay Company's territories and was also connected with one of the Montreal banks.

³ The Liberals were the supporters of the Government of Baldwin and Lafontaine.

Great Britain now which they had not then, & that the consequences of the Bill in question and the removal of the seat of Gov^t. have therefore proved under Providence mainly conducive to the check which the desire for annexation has received.

Now if these views be sound it follows I think that there is a lull rather than a cessation of the trade wind which is driving this Colony to the States. The favourable moment may be improved, but if it be not improved I doubt not but that the gale will shortly set in again with increased severity. The promptings of self interest are likely to prove in their operation more constant and more lasting than the sentiment of political gratitude of which I have spoken. In a word, unless prices are equalized or nearly so on the two sides of the line I fully believe that you will hear ere long a renewal of the annexation cry and that it will be louder than it has been yet. It is possible that the effect of the repeal of the navigation laws may be to produce this equality of prices—If so, all will be well even without reciprocity. I should deceive you however if I were to lead you to suppose that I thought less than this would keep the Canadians quiet. It is quite true that they are much more lightly taxed than they would be under annexation—We are doing all we can to demonstrate this, as an article which I enclose from the *Globe* will shew. But it is the interest of the promoters of annexation to mystify this subject as much as possible and they will be ably abetted I doubt not by the Cobden class of home politicians who will both declaim against the expense of our system of Gov^t. and then threaten to saddle the Colony with the cost of its military defence. I have sent you officially by a late mail the Montreal annexation manifesto and the Minute of Council respecting the dismissal of Magistrates & other officeholders who signed it. I think this will be as good an opportunity as any I could furnish you with for expressing your sentiments on the subject.

As respects my own prospects I have not much to say at present. The English Press still retails Montreal lies & with wonderful unanimity every newspaper (except the *Times* which says nothing on the subject) which reaches the colony, from the *Daily News* to the *John Bull*, concurs in vilifying the Gov^t. Gen^l. This is nuts to McNab¹ and the *Gazette*² who revel in the prospect of my being forthwith recalled. On the other hand I think I perceive symptoms of a blush rising on the cheek of some of the more moderate conservatives at the gross injustice of these proceedings.—The *St. John's News* from

¹ Sir Allan Napier MacNab, who had been knighted for his services in the Canadian Rebellion, was the leader of the extreme Conservatives in Canada—the remnants of the 'Family Compact' which had once dominated the Upper Province. He was a bitter opponent of the Rebellion Losses Bill and went to England to invoke Imperial interference. From 1854 to 1857 he was the head of the Canadian Ministry, though its real leader was J. A. Macdonald.

² The *Montreal Gazette* was the organ of the English-speaking Conservatives of Lower Canada.

which I enclose an Extract is a Lower Canada Conservative Paper. The St. Catherine's Journal is Radical. I am sometimes inclined to despond, for what with the desire that exists in certain quarters to run down the Colonial Administration, and in others to mystify the British Public with respect to the effects of Free Trade, I see little prospect I do not say of justice being done to the Canadian Govt. but of any decency or measure being observed in calumniating it so long as I am here.

Yours very sincerely,

ELGIN & KINCARDINE.

16

DESPATCH FROM GREY TO HEAD

(C. O. 189/19: P. R. O.)

Downing Street, 11 Dec. 1849.

SIR,

1. I have to acknowledge your Despatch, No. 38, of the 10th April last, enclosing an Address to Her Majesty, presented to you by a Committee of the Assembly on behalf of the House, the prayer of which is, that Her Majesty will direct the Instructions given to Lt. Governor Sir William Colebrooke, in my Despatch of 2nd March 1848 may be reconsidered, so far as regards the proposal of a Bounty on the Cultivation of Hemp.

2. You will acquaint the Assembly that I have laid their Address before the Queen, and that Her Majesty was pleased to receive it very graciously: but you will also inform them that after having given the fullest consideration to the subject Her Majesty's Servants do not feel themselves able to advise the Queen to Comply with the Prayer of the Address.

3. Parliament has for many years steadily persevered in a course of policy which has had for its object gradually to relieve the Commerce of the Empire from restrictions—to abandon all attempts to direct Capital and industry by artificial means into channels which they would not naturally seek. In pursuance of this policy, Laws enacting such restrictions and imposing high duties upon Imports have been successively repealed, and bounties which were formerly granted to some extent in this Country have been gradually discontinued, until the Trade of the Empire may now be said to stand on the footing of being nearly free from such interference.

4. The benefits which are expected to arise from this policy will be greatly increased through its general adoption by the principal Nations of the World, which H.M.'s Govt. hope to see eventually brought about. But it would materially interfere with the attainment of the happy result if it should be observed by Foreign Countries

that the former and narrower policy of endeavouring by Bounties or restrictions to divert capital and industry to other than their natural channels was again adopted with Her Majesty's Assent in any part of Her Dominions.

5. I cannot therefore alter the instructions given to your Predecessor, and thus authorize you to assent in H.M.'s Name to Enactments which would be prejudicial to the interests of the Empire at large.

6. H.M.'s Govt. have felt it the more necessary to come to this determination, because they are persuaded that measures of the kind thus proposed, injurious as they would be to the Empire for the reasons already assigned, would be peculiarly so to New Brunswick itself. Indeed one of the grounds assigned by the Assembly in favor of the Policy which they recommend seems to afford strong reasons against it. They state, that in a new Colony, where Capital is scarce, and the resources of the Country comparatively but little developed, the granting of Bounties may be not only consistent with good policy, but in many instances necessary. But this argument appears to lose sight of the principle that the scarcer capital may be, the more necessary it is that it should be applied to the best advantage. The effect, and indeed the object of Bounties is, to cause Capital to be employed in pursuits which, without the assistance of such Bounties, would not offer sufficient Returns to induce Individuals to follow them: while it is obvious that no Capital can be devoted in any Country to new Branches of industry unless it be withdrawn from old ones; and consequently the effect of the Bounty would be to induce individuals to give up some business, naturally remunerative, in order to embark in some other in which they would have a Bounty in addition to the natural and legitimate return; and this Bounty would of course be derived from the Taxes levied on the general industry of the Colony.

7. I trust that the Assembly will, on further reflection, perceive how little such a result would tend to the real advantage of the Province.

I have, &c.
(signed) GREY.

17

CANADIAN-AMERICAN RECIPROCITY TREATY

(P.P., 1854-5, lv.)

[*Ratifications exchanged at Washington, September 9, 1854.*]

HER Majesty the Queen of Great Britain, being equally desirous with the Government of the United States, to avoid further misunderstanding between their respective subjects and citizens in regard to the extent of the right of fishing on the coasts of British North America, secured to each by Article I of a Convention between Great

Britain and the United States, signed at London on the 20th day of October, 1818; and being also desirous to regulate the commerce and navigation between their respective territories and people, and more especially between Her Majesty's possessions in North America and the United States, in such manner as to render the same reciprocally beneficial and satisfactory, have respectively named Plenipotentiaries to confer and agree thereupon, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, James, Earl of Elgin and Kincardine, Lord Bruce and Elgin, a Peer of the United Kingdom, Knight of the Most Ancient and Most Noble Order of the Thistle, and Governor-General in and over all Her Britannic Majesty's Provinces on the Continent of North America, and in and over the Island of Prince Edward;

And the President of the United States of America, William L. Marcy, Secretary of State of the United States;¹

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon the following Articles:

ARTICLE I.

It is agreed by the High Contracting Parties, that in addition to the liberty secured to the United States' fishermen by the above-mentioned Convention of October 20, 1818, of taking, curing, and drying fish on certain coasts of the British North American Colonies therein defined, the inhabitants of the United States shall have, in common with the subjects of Her Britannic Majesty, the liberty to take fish of every kind, except shell-fish, on the sea-coasts and shores, and in the bays, harbours, and creeks of Canada, New Brunswick, Nova Scotia, Prince Edward's Island, and of the several islands thereunto adjacent, without being restricted to any distance from the shore; with permission to land upon the coasts and shores of those colonies and the islands thereof, and also upon the Magdalen Islands,² for the purpose of drying their nets and curing their fish: provided that in so doing they do not interfere with the rights of private property, or with British fishermen in the peaceable use of any part of the said coast in their occupancy for the same purpose.

It is understood that the above-mentioned liberty applies solely to the sea fishery, and that the salmon and shad fisheries, and all fisheries in rivers and the mouths of rivers, are hereby reserved exclusively for British fishermen.

And it is further agreed that in order to prevent or settle any disputes as to the places to which the reservation of exclusive right to British fishermen contained in this Article, and that of fishermen

¹ W. L. Marcy was the Secretary of State of President Pierce, who assumed office in March 1853.

² A group in the Gulf of St. Lawrence, some fifty miles north-west of Cape Breton and north-east of Prince Edward Island.

of the United States contained in the next succeeding Article, apply, each of the High Contracting Parties, on the application of either to the other, shall, within six months thereafter, appoint a Commissioner. The said Commissioners, before proceeding to any business, shall make and subscribe a solemn declaration that they will impartially and carefully examine and decide, to the best of their judgment, and according to justice and equity, without fear, favour, or affection to their own country, upon all such places as are intended to be reserved and excluded from the common liberty of fishing under this and the next succeeding Article; and such declaration shall be entered on the record of their proceedings. The Commissioners shall name some third person to act as an Arbitrator or Umpire in any case or cases on which they may themselves differ in opinion. If they should not be able to agree upon the name of such third person, they shall each name a person, and it shall be determined by lot which of the two persons so named shall be the Arbitrator or Umpire in cases of difference or disagreement between the Commissioners. The person so to be chosen to be Arbitrator or Umpire shall, before proceeding to act as such in any case, make and subscribe a solemn declaration in a form similar to that which shall already have been made and subscribed by the Commissioners, which shall be entered on the record of their proceedings. In the event of the death, absence, or incapacity of either of the Commissioners or of the Arbitrator or Umpire, or of their or his omitting, declining, or ceasing to act as such Commissioner, Arbitrator, or Umpire, another and different person shall be appointed or named as aforesaid, to act as such Commissioner, Arbitrator, or Umpire, in the place and stead of the person so originally appointed or named as aforesaid, and shall make and subscribe such declaration as aforesaid.

Such Commissioners shall proceed to examine the coasts of the North American provinces and of the United States embraced within the provisions of the first and second Articles of this Treaty, and shall designate the places reserved by the said Articles from the common right of fishing therein.

The decision of the Commissioners and of the Arbitrator or Umpire shall be given in writing in each case, and shall be signed by them respectively.

The High Contracting Parties hereby solemnly engage to consider the decision of the Commissioners conjointly, or of the Arbitrator or Umpire, as the case may be, as absolutely final and conclusive in each case decided upon by them or him respectively.

ARTICLE II.

It is agreed by the High Contracting Parties that British subjects shall have, in common with the citizens of the United States, the liberty to take fish of every kind, except shell-fish, on the eastern

sea-coasts and shores of the United States north of the 36th parallel of north latitude, and on the shores of the several islands thereunto adjacent, and in the bays, harbours, and creeks of the said sea-coasts and shores of the United States and of the said islands, without being restricted to any distance from the shore; with permission to land upon the said coasts of the United States and of the islands aforesaid for the purpose of drying their nets and curing their fish, provided that in so doing they do not interfere with the rights of private property, or with the fishermen of the United States in the peaceable use of any part of the said coasts in their occupancy for the same purpose.

It is understood that the above-mentioned liberty applies solely to the sea fishery, and that salmon and shad fisheries, and all fisheries in rivers and mouths of rivers, are hereby reserved exclusively for fishermen of the United States.

ARTICLE III.

It is agreed that the articles enumerated in the Schedule hereunto annexed, being the growth and produce of the aforesaid British colonies, or of the United States, shall be admitted into each country respectively free of duty:

Schedule.

Grain, flour, and bread-stuffs of all kinds.

Animals of all kinds.

Fresh, smoked, and salted meats.

Cotton-wool, seeds, and vegetables.

Undried fruits; dried fruits.

Fish of all kinds.

Products of fish and of all other creatures living in the water.

Poultry.

Eggs.

Hides, furs, skins or tails undressed.

Stone or marble in its crude or unwrought state.

Slate.

Butter, cheese, tallow.

Lard, horns, manures.

Ores of metals of all kinds.

Coal.

Pitch, tar, turpentine, ashes.

Timber and lumber of all kinds, round, hewed, and sawed,
unmanufactured in whole or in part.

Fire-wood.

Plants, shrubs, and trees.

Pelts, wool.

Fish-oil.

Rice, broom-corn, and bark.

Gypsum, ground or unground.

Hewn, or wrought or unwrought burr or grindstones.

Dye stuffs.

Flax, hemp, and tow, unmanufactured.

Unmanufactured tobacco.

Rags.

ARTICLE IV.

It is agreed that the citizens and inhabitants of the United States shall have the right to navigate the River St. Lawrence and the canals in Canada used as the means of communicating between the Great Lakes and the Atlantic Ocean, with their vessels, boats, and crafts, as fully and freely as the subjects of Her Britannic Majesty, subject only to the same tolls and other assessments as now are or may hereafter be exacted of Her Majesty's said subjects; it being understood, however, that the British Government retains the right of suspending this privilege, on giving due notice thereof to the Government of the United States.

It is further agreed, that if at any time the British Government should exercise the said reserved right, the Government of the United States shall have the right of suspending, if it think fit, the operation of Article III of the present Treaty, in so far as the province of Canada is affected thereby, for so long as the suspension of the free navigation of the River St. Lawrence or the canals may continue.

It is further agreed, that British subjects shall have the right freely to navigate Lake Michigan with their vessels, boats, and crafts, so long as the privilege of navigating the River St. Lawrence, secured to American citizens by the above clause of the present Article, shall continue; and the Government of the United States further engages to urge upon the State Governments to secure to the subjects of Her Britannic Majesty the use of the several State canals on terms of equality with the inhabitants of the United States.

And it is further agreed, that no export duty or other duty shall be levied on lumber or timber of any kind cut on that portion of the American territory in the State of Maine watered by the River St. John and its tributaries and floated down that river to the sea, when the same is shipped to the United States from the province of New Brunswick.

ARTICLE V.

The present Treaty shall take effect as soon as the laws required to carry it into operation shall have been passed by the Imperial Parliament of Great Britain and by the Provincial Parliaments of those of the British North American Colonies which are affected by this Treaty on the one hand, and by the Congress of the United States on the other. Such assent having been given, the Treaty shall

remain in force for ten years from the date at which it may come into operation, and further, until the expiration of twelve months after either of the High Contracting Parties shall give notice to the other of its wish to terminate the same; each of the High Contracting Parties being at liberty to give such notice to the other at the end of the said term of ten years, or at any time afterwards.

It is clearly understood, however, that this stipulation is not intended to affect the reservation made by Article IV of the present Treaty with regard to the right of temporarily suspending the operation of Articles III and IV thereof.

ARTICLE VI.

And it is hereby further agreed, that the provisions and stipulations of the foregoing Articles shall extend to the Island of Newfoundland, so far as they are applicable to that colony. But if the Imperial Parliament, the Provincial Parliament of Newfoundland, or the Congress of the United States, shall not embrace, in their laws enacted for carrying this Treaty into effect, the Colony of Newfoundland, then this Article shall be of no effect; but the omission to make provision by law to give it effect, by either of the legislative bodies aforesaid, shall not in any way impair the remaining Articles of this Treaty.¹

ARTICLE VII.

The present Treaty shall be duly ratified, and the mutual exchange of ratifications shall take place in Washington, within six months from the date hereof, or earlier if possible.

In faith whereof, we, the respective Plenipotentiaries, have signed this Treaty, and have hereunto affixed our seals.

Done, in triplicate, at Washington, the fifth day of June, Anno Domini one thousand eight hundred and fifty-four.

ELGIN AND KINCARDINE.
(L.S.)

W. L. MARCY.
(L.S.)

18

LETTER FROM BOOTH² TO MERIVALE

(*P.P.*, 1856, xlv.)

Office of Committee of Privy Council for Trade,
Whitehall, 26 June 1855.

SIR,

THE Lords of Committee of Privy Council for Trade have had under their consideration your letter of the 13th instant, transmitting for their observations, by direction of Lord John Russell, copy of

¹ The Assembly of Newfoundland shortly afterwards decided to adhere to the treaty.

² James Booth was a Board of Trade official.

a despatch from the Governor of British Guiana, respecting a proposal which had been received from the chairman of a committee of the Legislative Assembly of Canada,¹ for the mutual abolition of custom duties upon the productions of the latter colony, and of British Guiana.

I am to request that you will inform Lord John Russell, that the proposal which forms the subject of Governor Wodehouse's despatch,² appears to this Board to be open to grave objections.

Since the adoption of free trade as the general principle of the commercial policy of the United Kingdom, it has been the object of Her Majesty's Government, in advising or controlling the legislation of the British colonies in matters affecting trade, to discourage the maintenance or adoption of protective duties in colonial tariffs.

The effect of the arrangement which is now proposed between Canada and British Guiana, would be to protect by discriminating duties, the produce of these two colonies respectively, against similar produce of foreign countries, of all other British possessions, and even of the United Kingdom itself.

If the colonies in question drew from each other exclusively their supplies of particular commodities, the case might have been met by a general abolition of duty upon such commodities whencesoever imported; by which measure the same advantage would have been derived, without the infringement of principle involved in the present proposal. This is, however, far from being the case; on the contrary, it appears obvious that the inducement which has led these two colonies to entertain the project in question, has been the mutual protection which its adoption would secure to their productions; for instance, Canadian lumber would enjoy a monopoly of the market in British Guiana, to the exclusion of the lumber of the United States; and the sugar of British Guiana would undersell the sugar of Jamaica and of Cuba, in the markets of Canada.

An artificial stimulus would by these means be given to the industry of particular localities; and the interest of the consumer in the two colonies would be prejudiced by an arbitrary interference with the free operation of trade.

My Lords are not aware of any exceptional circumstances in the condition of these two colonies, which would justify or render expedient a deviation from general principles in this particular case; and

¹ William Hamilton Merritt, the son of an American loyalist, who was a prominent business man of the Niagara district and for many years a member of the Canadian Assembly. He was a prominent advocate of reciprocity with the United States, and had taken part in the preliminary negotiations.

² Sir Philip Edmond Wodehouse was Governor of British Guiana from 1854 to 1861. For many years he had been in the Ceylon Civil Service, where he had shown marked ability but become involved in bitter quarrels with the Colonial Secretary. Afterwards he was from 1861 to 1869 Governor and High Commissioner of the Cape, where once again his usefulness was sometimes marred by his autocratic and unconciliatory disposition.

they observe from a despatch of the Governor of Barbadoes, transmitted in Mr. Merivale's letter of the 22d instant, that a resolution to the same effect has been passed by the House of Assembly in that colony, so that it seems probable, that unless the present measure is discouraged, it may receive an extension which might seriously compromise the system of commercial policy which Her Majesty's Government is anxious to maintain throughout the British empire.

It is necessary to remember that the proposal now under consideration, derives some colour from the treaty recently concluded between Her Majesty and the United States, providing for the mutual admission, duty free, into the United States and the North American Provinces, of certain articles of their respective produce.

In sanctioning this convention, it cannot be denied that Her Majesty's Government deviated from the rule which forms the fundamental principle of their recent commercial policy, but the political motive which determined them to adopt this course upon the occasion in question, was of a kind to counterbalance and outweigh considerations of purely commercial expediency.

Whether any such exceptional grounds exist in the present case, it is for Lord John Russell to decide; but in their absence, my Lords would recommend that the Governor of British Guiana should be informed that Her Majesty's Government cannot assent to a proposition of the kind under consideration.

I am, &c.

(signed) JAMES BOOTH.

19

DESPATCH FROM NEWCASTLE TO HEAD

(P.P., 1864, xli.)

Downing-street, 13 August 1859.

SIR,

I have the honour to transmit to you the copy of a Memorial which has been addressed to me by the Chamber of Commerce and Manufactures at Sheffield, representing the injury anticipated to their commerce by the increased duties which have been imposed on imports by the late Canada tariff.

I request that you will place this representation in the hands of your Executive Council, and observe to that body that I cannot but feel that there is much force in the argument of the Sheffield manufacturers. Practically, this heavy duty operates differentially in favour of the United States, in consequence of the facility for smuggling which so long a line of frontier affords, and the temptation to embark in it which a duty of 20 per cent. offers. Regarded as a fiscal expedient, the measure is impolitic; for whilst any increase of contraband trade must be at the expense of the Exchequer, the diminution of

foreign importations will probably more than neutralise the additional revenue derived from the higher duty.

Whenever the authenticated Act of the Canadian Parliament on this subject arrives, I may probably feel that I can take no other course than signify to you the Queen's assent to it, notwithstanding the objections raised against the law in this country; but I consider it my duty no less to the Colony than to the Mother Country, to express my regret that the experience of England, which has fully proved the injurious effect of the protective system, and the advantage of low duties upon manufactures, both as regards trade and revenue, should be lost sight of, and that such an Act as the present should have been passed. I much fear the effect of the law will be that the greater part of the new duty will be paid to the Canadian producer by the colonial consumer, whose interests, as it seems to me, have not been sufficiently considered on this occasion.

I have, &c.

(signed) NEWCASTLE.

20

MEMORANDUM OF GALT (October 25, 1859)

[EXTRACT]¹

(*P.P.*, 1864, xli.)

REPORT.

The Minister of Finance has the honour respectfully to submit certain remarks and statements upon the Despatch of His Grace the Duke of Newcastle, dated 13 August, and upon the Memorial of the Chamber of Commerce of Sheffield, dated 1 August, transmitted therewith.

It is to be deeply regretted that his Grace should have given to so great a degree the weight of his sanction to the statements in the Memorial, without having previously afforded to the Government of Canada the opportunity of explaining the fiscal policy of the province and the grounds upon which it rests. The representations upon which his Grace appears to have formed his opinions are those of a provincial town in England, professedly actuated by selfish motives; and it may fairly be claimed for Canada, that the deliberate acts of its Legislature representing nearly three millions of people, should not have been condemned by the Imperial Government on such authority, until the fullest opportunity of explanation had been afforded. It is believed that nothing in the Legislation of Canada warrants the expressions of disapproval which are contained in the Despatch of his Grace, but that on the contrary due regard has been had to the welfare and prosperity of Her Majesty's Canadian subjects.

From expressions used by his Grace in reference to the sanction

¹ On A. T. Galt, see above, p. 180, note 1.

of the Provincial Customs Act, it would appear that he had even entertained the suggestion of its disallowance; and though happily Her Majesty has not been so advised, yet the question having been thus raised, and the consequences of such a step, if ever adopted, being of the most serious character, it becomes the duty of the Provincial Government distinctly to state what they consider to be the position and rights of the Canadian Legislature.

Respect to the Imperial Government must always dictate the desire to satisfy them that the policy of this country is neither hastily nor unwisely formed; and that due regard is had to the interests of the Mother Country as well as of the Province. But the Government of Canada acting for its Legislature and people cannot, through those feelings of deference which they owe to the Imperial authorities, in any manner waive or diminish the right of the people of Canada to decide for themselves both as to the mode and extent to which taxation shall be imposed. The Provincial Ministry are at all times ready to afford explanations in regard to the acts of the Legislature to which they are party; but subject to their duty and allegiance to Her Majesty, their responsibility in all general questions of policy must be to the Provincial Parliament, by whose confidence they administer the affairs of the country; and in the imposition of taxation, it is so plainly necessary that the Administration and the people should be in accord, that the former cannot admit responsibility or require approval beyond that of the local Legislature. Self-government would be utterly annihilated if the views of the Imperial Government were to be preferred to those of the people of Canada. It is, therefore, the duty of the present Government distinctly to affirm the right of the Canadian Legislature to adjust the taxation of the people in the way they deem best, even if it should unfortunately happen to meet the disapproval of the Imperial Ministry. Her Majesty cannot be advised to disallow such acts, unless Her advisers are prepared to assume the administration of the affairs of the Colony irrespective of the views of its inhabitants.

The Imperial Government are not responsible for the debts and engagements of Canada. They do not maintain its judicial, educational, or civil service; they contribute nothing to the internal government of the country, and the Provincial Legislature acting through a ministry directly responsible to it, has to make provision for all these wants; they must necessarily claim and exercise the widest latitude as to the nature and extent of the burthens to be placed upon the industry of the people. The Provincial Government believes that his Grace must share their own convictions on this important subject; but as serious evil would have resulted had his Grace taken a different course, it is wiser to prevent future complication by distinctly stating the position that must be maintained by every Canadian Administration.

SLAVERY AND THE PLANTATION SYSTEM

THE most important of all the differences between the Old British Empire and the New lies in the vastly greater attention paid in the New Empire to the welfare of uncivilized and backward races. Slavery had at first been regarded as a mere matter of course—the obvious solution for the labour problem on tropical plantations. In 1807 the slave trade was, however, prohibited, and from 1823 on the Imperial Government made sincere and unremitting endeavours to improve the condition of the slaves. The ‘melioration’ policy was regarded by the planters as a meddlesome interference by ignorant enthusiasts; but in fact the men chiefly responsible for it—James Stephen and Henry Taylor—were men of extraordinary ability and insight, and the policy was a carefully thought-out whole, its object being to effect a gradual transition from slavery to freedom [1]. It failed, however, because there was so wide a difference in principle between slavery and freedom that not a mere reform but something like a revolution was needed to bring the change about [2]. In 1832 the Imperial Government slowly came to realize that its policy and the power of public opinion must by their very momentum bring abolition very soon, and at the end of the year the first official plan of abolition was prepared by Lord Howick [3]. After adopting Lord Howick’s plan, the Government changed its mind when the plan met with an unfavourable reception from the leading West Indians in England: and Lord Stanley, who had become Secretary of State, introduced and, with great difficulty and many modifications, carried a very different plan which provided for substantial compensation to the planters and for a six years’ apprenticeship—the old idea of a gradual transition from slavery to freedom in an altered form [4]. At first the apprenticeship seemed to work smoothly: the Special Magistrates who supervised its detailed working reported in general favourably [5], and one of the best West Indian Governors, Sir J. Carmichael Smyth, thought that if permitted to run its full course it would achieve the objects of its institution [6]. But whatever chance there was of this result soon disappeared: the extreme abolitionists discovered undoubted abuses in its working in Jamaica, their agitation further exasperated the Jamaica planters, and the Government, which had intended merely to provide additional safeguards for the negroes, was in the end driven to advise the Colonial Legislatures, in their own interests, to terminate the apprenticeship on August 1, 1838—two years before the stipulated time [7]. Thus was inaugurated, at any rate in the West Indies where most of the new freemen were to be found, an entirely new era in their social history.

The completion of emancipation at such short notice undoubtedly aggravated the difficulties. The Assembly of Jamaica, beside itself with fury, roundly denounced the Imperial Government, the people of England, and all their works [8]. Finally it refused to perform its functions, though the attempt of the Whigs to suspend the constitution for five years was frustrated by Sir Robert Peel. Meanwhile, work had for a time ceased almost entirely on the estates of Jamaica, though opinions differed as to where

the responsibility lay [9, 10]. The sanity and reasonableness of Lord John Russell [11] and the conciliatory temper of the new Governor, Sir Charles Metcalfe, brought about an improvement in feeling, but the labour problem both in Jamaica and in the other colonies remained acute. Its difficulty was fully realized by Russell, who was ready to admit that recourse must probably be had to immigration, though he inclined to the belief that the West Indies would never quite regain their old position as exporting colonies [12]. This was a definite step forward, and in 1841 Metcalfe strongly urged the propriety of taking another step and placing greater confidence in the goodwill of the planter [13]. Stephen himself, while doubting whether such confidence was justified, admitted that, slavery having disappeared for ever, the best thing for planter and negro alike was to trust the planter and not to antagonize him [14].

From this year may be dated a decline in the influence of 'Exeter Hall' views on West Indian policy. In 1842 a Committee of the House of Commons reported, despite the opposition of the anti-slavery party, in favour of immigration from Africa, under Government supervision, as the best remedy for the distress of the planters [15]. The history of the next few years is largely one of unavailing efforts to act upon this recommendation; but in 1844, as some compensation for the admission to the British market of foreign sugar grown by free labour, the planters were given permission to introduce coolies from India, as the planters of Mauritius had already done [16]. This immigration continued for some three years and added some thousands of men to the labour force of the colonies. The more penetrating observers, such as Lord Elgin, realized, however, that immigration alone could not solve all West Indian problems—that the planter must improve his methods of cultivation and the negro be educated and gradually civilized [17]. Still West Indian society seemed gradually to be accommodating itself to the altered condition of affairs when a second bomb was dropped in its midst in the shape of the Sugar Duties Act of 1846.¹ This Act revealed for the second time how artificial was the base on which the economic fabric of the West Indian Colonies had been reared. The shock proved too much for many of the planters, who were involved in utter ruin [18]. Their case was indeed hard, and they received a good deal of sympathy in England [19]. A Committee of the House of Commons, by a narrow majority, recommended that a protective duty of 10s. per cwt. on sugar be continued for six years [20], and even the Government, as we have seen,² postponed until that time the equalization of the foreign and colonial rates.

In the long run the crisis probably had an invigorating effect upon the West Indies. The rate of wages, which had encouraged the negro to take things easily, fell [21]: public opinion in England grew more sympathetic towards immigration, and the planter was allowed more control over the immigrant labourer. In 1849-50, when they had recovered from the fit of despairing and ineffectual rage into which the crisis had thrown them, the planters of British Guiana and Trinidad asked for and were allowed, with Imperial aid in the form of a guarantee of the necessary loan, a renewal of Indian coolie immigration [22]. It is true that many of the planters had succumbed, but by 1852 sugar cultivation in the majority of the colonies

¹ See above, Section IV, No. 11.

² *Ib.*, No. 13.

had—thanks largely to the coolies—once again become a remunerative occupation [23, 24]. Jamaica, with its anomalous constitution, its load of debt, and its exhausted soil—uncompensated by the densely crowded population of Barbadoes—was in a less enviable position, but even in Jamaica the black despair of 1848 had passed away [25]. Abolition had brought great changes in West Indian society, but at least the colonies had escaped the abandonment of the plantations and relapse into barbarism which had at times seemed near: they could not hope to take the prominent place on the stage of civilization which they had filled in the spacious days of the eighteenth century, but they had still a part to play.

I

MEMORANDUM OF STEPHEN (October 1831)

[EXTRACT]¹

(*Howick Papers.*)

Answer to Objections to the Proposed Order in Council respecting Slavery.

1st. It is said that an enquiry before a Committee of the House of Lords into the actual condition of the Slaves in the British Colonies should precede any legislation for the improvement of that condition.

If any proposition be elementary and incontrovertible it is that the Lawgiver should be well informed respecting the state of the Society in which his laws are to operate. The West India Agents² are entitled in this argument to the full benefit of every inference which can be legitimately drawn from that admission.

But an exact knowledge of the particular Society for which he legislates is not the only qualification for a Legislator. It is not even the highest or the most important. Ignorance of local peculiarities may be compensated by enlarged views of human character and of the social interests of mankind. The habit of dealing with large practical questions—an exemption from local prejudices—the absence of selfish interests—honesty of purpose—and a mind open to the admission of truth come in what direction it may—these and such as these are the endowments which really justify the assumption of that high responsibility under which every man acts who lends his authority or his Counsels to the promulgation of any Code of Laws.

¹ This memorandum afterwards formed the basis of a circular despatch from Lord Goderich, dated Nov. 5, 1831, forwarding the Order in Council to the various Crown Colonies to which it applied. In the 'melioration' period these colonies were the field of battle between the planters and the reformers: it was not until the Abolition Act that the colonies with legislatures of their own were directly interfered with.

² Agents had been appointed in the Restoration period by the different West Indian Colonies, primarily to watch over their commercial interests, and they came to have a recognized official status. It was they who had raised the objections to which Stephen was replying. They gradually disappeared in the years following, the Crown Agents for the Colonies assuming their functions as business agents and the West India Committee being left to make representations of grievances and so forth.

Nothing is more frequent or easy than to confound minute information with extensive knowledge—a microscopic with a telescopic view of human affairs. I can well believe that a man who has passed his life on a Plantation in Jamaica or in the legal Tribunals of that Colony may know much respecting the state of Slavery of which the most profound thinkers and the most practised Statesmen in Europe are ignorant. But it is one of the inveterate illusions under which the resident West India Body labour, to suppose this proximity of observation an infallible and necessary guide to sound conclusions on the subject in controversy. If they know much of which others are ignorant they are also ignorant of much which others know. They have not watched the progress of public opinion throughout the civilized world and are unconscious of the rapid approach of that day in which it will be impossible to sustain Slavery in the British Dominions except during the short space required for its more complete and deliberate extinction. Their lives are passed in a contracted circle amidst petty feuds and pecuniary embarrassments. There is no civilized Society on earth so entirely destitute of learned leisure, of literary and scientific intercourse and even of liberal recreations. Perhaps it would be difficult to find a white man in the Island of Jamaica who does not regard England as his home and the Colony as a place of Exile. With minds thus unprepared to take comprehensive views of this great controversy, the Members of the Colonial Assemblies are at the same time in subjection to prejudices on the subject sufficient to disturb the conclusions of the most profound and otherwise enlightened reasoners. They are engaged in a struggle for the maintenance of their own power—for the support of their immediate interests and for the defence of their collective and personal reputation. They are exasperated not perhaps unreasonably by much injurious language. They are alarmed by the predictions of approaching anarchy which were probably uttered at first with the view of intimidating others, and the more wise and liberal Members of the Colonial Assemblies are themselves scarcely free Agents but are compelled to humour the passions and to give utterance to the angry feelings of their constituents, a majority of whom escape the humiliation of abject poverty only in virtue of that pure European blood which is about to lose its exclusive privileges.

The ignorance imputed to European Legislators on this subject is at least remediable. The moral incapacity which may with so much greater justice be attributed to the Colonial Assemblies must be coeval with the institution of Slavery itself. It is not unreasonable to believe that a better Slave Code could be framed in England than in Jamaica—better not only for the Slaves but for their owners—better adapted to the real exigency of the Case—and better suited to avert those desperate changes which the Colonists so earnestly deprecate. The Judge who presides at the trial of an Action has a much

more distinct apprehension of the facts than any of the witnesses examined before him and a far clearer view of the principles which should guide the decision than either of the litigant parties.

In the present case it is however said that the evidence has not been heard and that it is precisely on that ground that an enquiry before the House of Lords is demanded. The objection deserves an attentive consideration.

In the progress of the discussions raised by the opponents of Negro Slavery several facts have been ascertained which at the commencement of the debate were either wholly unknown or imperfectly understood.

Thus at the present time no man denies that the Office of Protector of Slaves as established in the Crown Colonies¹ is altogether unknown in the rest—that is, that there is no one person charged with the duty and armed with the power of enforcing obedience to the Laws made for the protection of this Class of Society. That Sunday is the public Market Day is not only admitted but vindicated in the very papers under consideration. The universal refusal to abolish the use of the whip in the field has extorted the reluctant admission that Slaves habitually labour under the lash. No one pretends that women are exempt from this species of punishment or that the owner is restrained by any Law from convicting his Slave of any fault and inflicting by his own authority on the offender 39 lashes in the absence of all witnesses and at the impulse of the moment. It is allowed on all hands that as this domestic jurisdiction is exercised without the previous sanction of the Magistrate so it is not followed by a Report to any authority whatever of the manner in which so high a trust has been executed. The general disregard of marriage amongst the Slaves is placed beyond the possibility of doubt, nor will the most zealous advocate of the Colonies deny that the owner is expressly authorised by their most recent Laws to prohibit any marriage which may interfere with his own supposed interests or check the indulgence of his own appetites. The property which the later Laws permit the Slave to acquire they do not allow him to defend in the ordinary course of Law. No one pretends to quote any Act establishing petty Courts for the assertion on cheap and easy terms of the proprietary rights of the Slaves. That the Owner may separate from each other the nearest kindred at his pleasure is not only indisputable but is proved by two private Acts passed in the very last Session of the Jamaica Assembly. No one affects to produce a Law which guarantees a Slave purchasing his freedom from the risk of a bad title and the proposal to enable a Slave to effect such a purchase on an appraisement in opposition to the owner's will is denounced as a most dangerous

¹ The institution of a 'Protector of Slaves' in each Crown Colony was one of the features of the 'melioration' policy. It was probably borrowed from the Spanish system.

innovation. The absolute silence of the Law upon the all important question under what circumstances an individual of African descent shall be presumed to be either a Slave or a free man is acknowledged. The example set by some of the smaller Islands of admitting the evidence of Slaves in the same manner as that of free men the Assemblies of Jamaica and Barbadoes have not pretended to imitate. To the demand for specific rules regulating the food of the Slaves no Colonies excepting those comprised in the old Leeward Island Government have attempted an answer and even there the Governor and the Councils of St. Christopher's and of Nevis have within the last six months frankly stated that the Law is a dead letter. The same assertion may be made with scarcely any qualification respecting the Clothing of the Slaves, the petty furniture of their huts and their medical attendance. The Councils of St. Christopher's and Nevis on the occasions to which reference has just been made allowed that from the dawn of day till after night fall the Slaves labour with scarcely any intermission with the addition of night work during Crop time, and the Assembly of Jamaica in the Session of 1830-31 authorise field labour from 5 in the morning till 7 at night during about 7 months of the year with no restraint whatever for the remaining 5 and though intervals are required for breakfast and dinner amounting to 3 hours no attempt is made to interdict during that time the labour of grass picking and other works which render the temporary repose little more than a nominal relief.

That the owners by whom this system is superintended are in a state of the most deplorable poverty their own importunate complaints daily attest and that under their management population is rapidly declining the Records of the Registry Office in London amply demonstrate.¹

These then are matters of fact into which it is superfluous to enquire because they are the distinct though reluctant admissions of those who demand the enquiry. This is the system to which it is the settled purpose of the Assemblies to adhere, because all importunity for the abandonment of it has for the last 8 years proved ineffectual. These are the precise grievances which the proposed Order seeks to remedy. Yet while the facts are acknowledged and the determination to abstain from voluntary reform avowed it is said that a compulsory reformation must not be undertaken till the facts are proved.

Suppose the enquiry entered upon and suppose it established that a field Negro is upon the whole well off and as happy as he is represented to be—what then? Will it be less true that they have no

¹ In 1815 Wilberforce introduced into the House of Commons a Bill to establish a register and triennial census of slaves in every colony, as a check on illicit importation. The Bill was not passed, but the colonies, taking a hint dropped by Castle-reagh, themselves instituted a slave registry in the course of the next few years, and in 1819 the colonial registries were supplemented by the creation of an office in London.

responsible Protectors—that Sunday is desecrated—that they work under the lash—that women are whipped—that they do not enjoy the common right of marriage—that there is no security for their food—that the Law justifies labours of extreme severity—and so on? And if such *must* be the conclusions which must result from any investigation can it be said that pending the enquiry such practices ought to be tolerated?

It is the ordinary illusion of almost all minds to be affected by individual distresses and indifferent to collective evils, forgetting that the mass of general suffering is made up of particular sorrows which if separately pictured as distinct images would present an irresistible demand for relief. If pending the proposed enquiry in the House of Lords 5000 or 500 men and women in the Colonies should sink under these admitted hardships no man who should afterwards learn the details of the calamity would readily forgive himself for the hesitation which occasioned it. Those details it is true will reach no human ear but is it on that account a less urgent duty to prevent their occurrence?

Those who have lived in opulence can readily sympathise with the calamities of the rich and can estimate the sufferings attendant on the loss or diminution of fortune. It is less easy for them to enter in imagination into the calamities of the poor. But assuredly this also is one of the illusions besetting this discussion against which it is necessary to maintain a constant watch. The losses of Gentlemen connected with the West Indies are urged with importunate earnestness as a reason for delaying redress to their Slaves. But the deprivation of a Mansion or an Equipage painful though it may be is hardly to be set against the protracted exclusion from those common advantages of human life under which from the admitted facts of the case the Slaves are proved to be labouring.

But it is not only facts that are admitted: there are general *principles* which no reasonable man will controvert. Unrestrained power must and will be abused. Unpopular laws never can be executed by voluntary agency. The desire of wealth unless checked by precise and strict laws will engender oppression. The natural distinctions of colour and origin coinciding with the artificial distinctions of unlimited authority on the one hand and absolute submission on the other cannot but induce pride contempt and ill usage. The Law which makes one man the proprietor and the other the property and which delegates to the proprietary Body all powers legislative, judicial, magisterial and domestic cannot but be the fertile source of abuses. To arrest all remedial measures till that which is infallibly true *a priori* shall have been proved to be true *a posteriori* is nothing else than deliberately to sanction the continuance of moral and physical evils which the Legislator is bound not to endure for a day if the cure be in his power.

In the present case too large a concession is made when it is admitted for the sake of argument that the projected measure has *not* been preceded by enquiry. For eight years past the various provisions of this Law have been the subject of the most laborious discussion with the different Colonies. Scarcely a single proposition contained in it could be mentioned upon which Governors, Councils, Assemblies, public Meetings and private Disputants have not contributed every imaginable variety of argument and evidence. These speculations already fill from 8 to 10 folio volumes. The necessity of such legislation is the practical inference from the whole debate. It is of course an inference from which the West Indians dissent. Whether they or the authors of this Law reason most justly is a fair subject of discussion. But it is altogether erroneous to say that the parties have not the same premises upon which to argue. If it be asserted that those premises are defective and that full justice is not done to the case of the proprietors the answer is obvious that in that case the fault is their own. If eight years of protracted debate with every possible facility of transmitting and publishing proofs of the alleged happiness of their Slaves have proved too little for their purpose it is difficult to conceive within what limitation of time the task would be accomplished.

But it is even yet more worthy of notice that there is not a part of this Law which is not taken substantially from Laws already in force in the Colonies and which even originated in them. The exceptions to this assertion relate to matters of minor importance the omission of which would be comparatively immaterial. The commencement of the system of legislation of which this Order would be the consummation was in Trinidad. Sir Ralph Woodford¹ prepared the first Draft of the Order of 1824. The Order of 1830 consolidated that of 1824 with various amendments founded on suggestions derived from the Laws of other Colonies. The proposed Order borrows more largely from other Colonial authorities but is at last little more than a concentration of the different lights which the West Indians themselves have afforded by their own enactments. It is not of course meant, that the correspondence is more than substantial. There are very many subsidiary regulations to secure the effective execution of the general principles thus gathered from different sources. But for those principles His Majesty's Government are not responsible.

The proposed Order embraces a very large part of the Order of 1830—a Law promulgated by an Administration of which Lord Bathurst was a prominent Member and when his Lordship presided at the Council Board.² He conducted the correspondence respecting

¹ Sir Ralph James Woodford was appointed Governor of Trinidad in 1814, at the age of 29, and held the office until his death on leave of absence in 1828. He was a strong and energetic Governor.

² Henry, third Earl Bathurst, was Secretary of State for the Colonies from 1812 to 1827. No other man has held the office for so long, but his tenure was not

Slavery for the first five years of its continuance and was probably better qualified than any other man to take a comprehensive view of the subject. So much of the Order as rests on that foundation should be regarded as beyond the reach of present controversy. No objection to it was made by the West India Body on its promulgation. No protest against it has hitherto been received from any of the Crown Colonies except the Cape of Good Hope where difficulties were raised altogether confined to their own peculiar situation. The application for a Committee of the House of Lords should have been made twenty months ago.

In transmitting the Order of 1830 Sir George Murray¹ expressly announced the intention of the then Government to make all the more considerable additions to the law which are now contemplated. Yet to that design, though made public in the parliamentary papers, no objection was ever raised on the ground of the necessity of a previous enquiry.

Whether the plan announced in the House of Commons of tendering to the Assemblies the choice of accepting this Law or of paying discriminating duties will be executed must for the present be uncertain. The immediate question for decision respects only the Crown Colonies and with reference to them the problem is whether, pending an enquiry before the House of Lords, the Government shall delay indefinitely the execution of Sir George Murray's avowed purpose of proceeding further.

If the preceding argument should not be thought to furnish a sufficient answer to the application for delay that answer may perhaps be found from considering the probable course of the enquiry if it should be conceded. The object of the West India Body is avowedly delay and even if the object were not avowed it could scarcely be dissembled. In the present state of public affairs in this Kingdom the facilities for the indefinite protraction of a parliamentary enquiry can scarcely be exaggerated especially when as in the present case it would be prosecuted only at the instance of one of the two parties to the controversy to which it relates. It may be assumed as indisputable that Mr. Buxton and his friends would disclaim all participation in the proceedings of the Committee.² They did so on the Enquiry

particularly noteworthy. From 1828 to 1830 he was President of the Council in the Duke of Wellington's Ministry—his last political office.

¹ Sir George Murray was Secretary of State for the Colonies from 1828 to 1830. He was summoned to take the office from Ireland where (though an M.P.) he was Commander-in-Chief; and afterwards he was for many years Master-General of the Ordnance. He was an able soldier and not unsuccessful as a minister, though his admirable intentions were not always followed up by action.

² Thomas Fowell Buxton, a brewer by profession, was from 1824 to 1837 the recognized leader of the anti-slavery party in the House of Commons. Though the ill-fated expedition sent to the Niger in 1839, under his auspices, to civilize Africa showed him to be a little lacking in the sense of the practical, he was a good speaker and an able man, whose sincerity and whole-hearted devotion to the interests of those whom he conceived to be oppressed could be questioned by none.

before the Privy Council in 1827¹ on grounds which they would now urge with increased advantage. They said and would say again that the public voice was with them—that they had the solemn pledges of the Government in their favor—that they could adduce a body of facts which no one can dispute and could refer to the permanent principles of human conduct which no one can controvert in aid of their conclusions. They would arraign the enquiry as an illusory and evasive proceeding and would appeal to that popular support in which their real strength lies, the importance of which was certainly never greater than at the present moment. They would urge the futility of listening to the evidence of interested witnesses and would quote the various cases which illustrate the species of martyrdom incurred by every man connected with the Colonies who dares to speak the truth on this subject. Without expressing an opinion as to the wisdom or the justice of these views their policy with a view to the object of the Anti-Slavery party or the probability of that party acting upon them scarcely admits of doubt. Thus then the West Indians unimpeded by any antagonists might prolong the enquiry from Session to Session and when at last the Report should be made what would it avail? The Anti-Slavery party would treat the conclusions of the Committee with utter indifference as the result of packed evidence and an *ex parte* enquiry. A few more large volumes would be added to the present mass which no one reads. The controversy would proceed with all its former acrimony. The sincerity of the Government would be distrusted and popular feeling would be even more than ever excited against the present Colonial system. It would argue a strange ignorance of the state of public feeling in England to believe that the concurrent testimony of every human being who ever visited the West Indies could induce the people of this Country to tolerate a system of which the basis is, that the great body of the Society are to be held in absolute property by a small dominant minority. The opinions of the year 1831 will revolt against such a state of law in any part of the British Empire as surely and scarcely with less warmth than they would against the refusal of Parliamentary Reform.

I conclude that if remedial measures were suspended pending the proposed enquiry great practical injustice would be done, great distrust and discontent would be excited and great advantage afforded to those whose reliance rests on their influence with the people at large.

If however that conclusion should not be thought to be sufficiently

¹ At the close of 1826 the proprietors of Demerara and Berbice (British Guiana) petitioned that the provision made by Order in Council for compulsory manumission should not be introduced until they had been heard against it before the Privy Council. An inquiry was held accordingly, and was not concluded until March 18, 1829, when the Privy Council decided, on the report of a Committee, that sufficient cause had not been shown for rescinding the clause.

established I should at least conceive it clear that to delay the Order until the close of an enquiry embracing the whole subject of the Sugar Duties and the Foreign Slave Trade would be quite out of the question. It might as well be postponed until satisfactory information has been obtained respecting the internal condition of Hayti or the cultivation of the Sugar Cane in the East Indian Presidencies.

2dly. It is alleged that time has not been afforded for ascertaining the influence and effects of the Laws passed in Jamaica and other Colonies in accordance with the Resolutions of the House of Commons of 1823.

It may be frankly admitted that human prescience cannot exactly foretell the remote effects of any change however inconsiderable in the relations of Society. I will not therefore hazard the assertion that the Jamaica Slave Act of 1830 unaided by any extrinsic force must be unproductive of the ultimate extinction of Negro Slavery. But it may with the utmost confidence be said that it has no such apparent tendency—that its tendencies are all the other way—that it scarcely affects to introduce any one substantial improvement—that it is replete with unjust and arbitrary rules—that it gives the Slave no real protection—that its remedial provisions will be a dead letter unless a race of men shall arise in the Island prepared to encounter a daily martyrdom in the cause of justice—and that it establishes on the most secure foundation all the oppressions under which this unhappy race of men have so long suffered. . . .

3dly. The moment selected for this legislation is objected to because the Colonies are in a dangerous state of excitement and are driven almost to despair by the commercial distresses which surround them.

It is particularly necessary in times of panic and agitation that the ruling powers should preserve that calmness of which in such seasons ordinary minds are deprived. Excitement and even despair may very probably exist throughout the West Indies and every one will admit that it is the duty of the Government to tranquillize those who are agitated and to animate those who are desponding as far as may be in their power. But these feelings like all others must be subjugated or moderated by dispassionate reason unless it be intended that the affairs of the world shall be brought into subjection to blind passion. What then is the excitement to which reference is made? If it be that of a small numerical minority yielding themselves to the guidance of their own tempers or alarms the remedy is to shew them by kind but firm language how much they exaggerate the real danger of their position. It may be right to tranquillize—it would be absurd to fear them. But if the excitement be that of the great numerical majority—if it be founded on just grounds and stimulated by consciousness of their own powers, a wise man will find in such a state of public feeling sufficient reasons for making promptly every concession which must

be made at last. I should pity the excitement of the owners and dread that of their Slaves. The one I would appease by respectful argument, the other by practical improvements of their condition.

Then as to despair from Commercial distress I believe its existence and I believe it to be well founded. The embarrassments of the Sugar Planters have existed almost ever since their occupation began. In the last century they gave to Parliament pictures of their distress which exceed all their present descriptions. The trade is gone. It is a fact which no one acquainted with the subject attempts to deny. The competition of the conquered Colonies¹—the exhaustion of their soils—the want of all division of labour—the growth of Sugar-planting in Louisiana, Porto Rico, Cuba and the Brazils—the Foreign Slave Trade—the wretched administration of Justice—the system of buying Estates on credit—Absenteeism—the consequent drain of all surplus profits to England and their consumption here—the unnatural stigma affixed to rural employments from their association with Slavery—the waste, indolence, profligacy of manners and barbarous ignorance engendered by that state of Society—all these are causes which have ruined our Colonies and which have driven the Colonists to despair. To yield to this mental lethargy is a pitiful weakness. To look the evil steadfastly in the face is the duty of wise and brave men. The mischief cannot be averted but it may be palliated and the palliation is to be found in retracing our steps and in preparing by such laws as the present for a state of Society in which Labour will be prompted by legitimate motives and earn its natural rewards and in which the Proprietors must be content to live among their Dependents and the people taught to look to their own industry for their maintenance. It is high time to break up the delusions by which this system has been so long supported.

4thly. It is objected that the Order does not refer and strictly adhere to the constitution and legal rights of each separate Colony and embodies in a general Ordinance regulations designed for Colonies widely dissimilar in local circumstances, rural employments and laws.

I have no wish to carry this argument higher than it can reasonably be stated and admit that if it were practicable there would be some convenience in making a distinct Law for each distinct Colony. But I think the advantage is exaggerated and the disadvantage overlooked. The relation of Master and Slave is substantially the same throughout the British Colonies. In all the same need exists for effective protection—for repose on Sunday—for the regulation of punishments—for ensuring to the Slaves the right of marriage—the defence of their property—the connexion of families—the facility of manumissions—the admissibility of their evidence—a proper supply of food, clothing and medical attendance and security against excessive labour.

¹ I.e. St. Lucia, Trinidad, British Guiana, and Mauritius—conquered in the Napoleonic Wars.

This is all at which the Law aims. These are necessities not local but universal, nor do I know how it is possible that any part of a Code of this Nature could be safely omitted in any Country where the relation of Owner and Slave exists. The great object of all Law is the common good of the great body of the people. In the Colonies the Slaves constitute that Body and Laws calculated for their benefit may be well established even at the expense of some incongruity with the general legal system. But it is of great importance to maintain uniformity on this subject nor is it pretended that except at the Cape of Good Hope the regulations are impracticable. There they are modified to meet the exigency.

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PRIVATE LETTER OF CAPTAIN ELLIOT (1832)

[EXTRACT]¹

(*Howick Papers.*)

As to my office it is a delusion. There is no protection for the Slave Population; and they will very shortly take the matter into their own hands, and destroy the Property. The only way of saving these Countries is to give the Slaves a reasonable share in the produce of their Labour.

I am desperately unpopular, although I am sure I have not intended to do my duty captiously. But the fact is that this Colony is in a state of rebellion; the administration of Justice obstructed or totally defeated—no taxes paid—the most vehement clamour, not only against the Laws themselves, but against the Lawmaking power. What remedy for all these evils is sent out to us? Despatches full of hopes and exhortations, of advice to repent and behave better. This impunity gives strength to the growth of the Evil. The Order in Council is a dead letter, and a dead letter contemned and decried in the most insulting terms. But if it were respected, would the Slave have benefited to such an Extent as he ought to be benefited, *and as he looks to be benefited?* No such thing. Setting aside the improbability of ensuring the observation of such a body of Law, I do deeply feel its inadequacy to present circumstances. You have brought forward the Slave to a certain point of civilization and intelligence, and he perceives the utter insufficiency of your System either for his further advancement or for his controul. What should be given to the Slaves is *such a state of FREEDOM as they are now fit for.*

¹ Captain Charles Elliot, then Protector of Slaves in British Guiana, was later in charge of British interests in China. He was recalled during the so-called Opium War, the recall exciting a good deal of controversy at the time. Afterwards he was at various times chargé d'affaires in Texas, and Governor of Bermuda, Trinidad, and St. Helena.

MEMORANDUM OF LORD HOWICK [EXTRACTS]¹*(Howick Papers.)*

The great problem to be solved in drawing up any plan for the emancipation of the Slaves in our Colonies, is to devise some mode of inducing them when relieved from the fear of the Driver and his whip, to undergo the regular and continuous labour which is indispensable in carrying on the production of Sugar. It is desirable to effect this not only for the sake of the planters but of the slaves themselves. If emancipation were to take place unaccompanied by some regulations of the kind I have supposed, and if the cultivation and manufacture of Sugar were in consequence to be abandoned, the Planters would be the more obvious sufferers by having the whole of the fixed capital invested in their Sugar works suddenly rendered of no value; but the slaves would also be great losers by the ruin of the trade of the Colonies and of all those who depend upon it, involving the destruction of the best prospect which exists of the population being gradually raised in the scale of civilization.

The two circumstances which as it appears to me are likely to oppose difficulties in the way of the production of Sugar by free labour, are the poverty of the Planters and the disproportion which exists between the population and the extent of territory in almost all our Sugar Colonies.

The Planters at present supply to the labourers whom they employ the mere necessities of life, yet they complain, not without cause, that they are on the verge of ruin. Their inability therefore to pay liberal wages seems beyond all question; but even if this were otherwise, the experience of other countries warrants the belief, that while land is so easily obtainable as it is at this moment, even liberal wages would fail to purchase the sort of labour which is required for the cultivation and manufacture of Sugar.

I will postpone for the moment the question arising out of the present distressed condition of the West Indians—namely what is the best mode of affording them that relief without which they could not possibly pay wages to their labourers—in order to consider in

¹ Throughout the later part of 1832 discussions proceeded between Lord Howick, then Under-Secretary for the Colonies, James Stephen, and Henry Taylor, on the means of abolishing slavery. Early in December a memorandum by Howick was circulated among members of the Cabinet, urging that an Abolition Bill should be brought in during the coming session: and this was followed by the memorandum here quoted, which, with some modifications of form rather than of substance, was also sent in circulation. It was considered by a Cabinet Committee (consisting of Lords Althorp, Goderich, and Holland, Lord John Russell, the Duke of Richmond, and Sir James Graham) and with some hesitation approved by them. It was, however, strongly opposed by the West India body, and for this and other reasons the Cabinet drew back. In the end the Cabinet gave its sanction to an entirely different plan put before the House of Commons by Lord Stanley on May 14, 1833.

the first place the effect which is produced by the insufficiency of the population in our Colonies to occupy the whole or even the greater part of the land available for cultivation. It appears to me that in all I have ever seen written upon the subject of Slavery, this circumstance has been if not altogether neglected at all events passed over with much less attention than it really deserves, believing as I do that it lies at the very root of the question.

In countries which are fully peopled labour can always be commanded by those who can afford to pay for it, because the mass of the population having no other means of existence than the wages of labour, are driven by necessity to work for those who are willing to employ them; but in countries in which the population is so small in comparison with the extent of territory, that a great part of the Soil remains unappropriated, unless some check is opposed to its occupation, no man can long be driven by necessity to work for another, since by cultivating land on his own account, he can maintain himself and his family. It has accordingly been invariably found that in countries so situated, it is impossible to carry on any species of industry which requires the continued and combined exertions of a number of individuals; the love of independence and the natural desire of having property of his own leads each man to obtain land for himself and to labour on his own account; or if he ever does consent to work for another, it is only for a short time and for an extravagant remuneration. The examples of the western states of America, of Canada, of the Cape of Good Hope, and of the Australian Colonies, may all be cited in order to shew that even amongst a population in a much higher state of civilization than that to which the slaves in the West Indies have attained, the facility of obtaining land effectually prevents the prosecution by voluntary labour of any enterprize requiring the co-operation of many hands. It is impossible therefore to suppose that the Slaves (who, though as I believe not more given to idleness than other men are certainly not less so) would if freed from controul be induced even by high wages to continue to submit to a drudgery which they detest, while without doing so they could obtain land sufficient for their support. Nothing is more common than to hear the planters attribute their inability to carry on their business by free labour solely to the idleness of the negroes and their indifference to the comforts and luxuries of civilized life, while the abolitionists again not unfrequently assert that it is the degradation which during the continuance of Slavery is supposed to attach to agricultural labour, which renders it at present impossible to hire labourers, and argue that general emancipation by putting an end to this idea, would remove the difficulty. In my opinion both parties are in error and overlook the chief obstacle to that change of system which all must agree to be so highly desirable. It is very true that an idea of degradation must necessarily attach to a kind of labour

which is usually performed by slaves, and that such an association of ideas could not long continue were slavery abolished; so that it would not be a permanent difficulty. But I am far from believing that its removal would enable the planters without any further trouble to induce the emancipated negroes to work for wages. On the other hand, it is also true that the slaves are averse to labour, and that their wants are of the simplest kind. But there is nothing peculiar in these circumstances; labour is universally disliked, nor is it ever submitted to except under the pressure of necessity, or for the gratification of wants which are felt as necessities: and far from its having been proved that the negroes require a different kind of stimulus from other men, and that they are so incurably idle that they can only be driven to exertion by violence and terror, many known and admitted facts are altogether at variance with the supposition that such is their character; and innumerable instances might be quoted in which negroes under the influence of an adequate motive have shewn themselves capable of the most persevering industry. The indolence and the indifference to the comforts and luxuries of civilized life which are attributed to them, they share with many other races of men. The Irish peasant for instance is not less lazy and his wants are not more numerous or less simple than those of the Negroes, yet he considers it a favour to be supplied with the hardest work at the lowest wages. The circumstances therefore which are usually dwelt upon by the planters, cannot alone account for the difficulty which they feel to exist in dispensing with the whip as a stimulus to labour. The case of Ireland which I have just mentioned seems to me to afford a clue by which we may discover both the real cause of the difficulty, and the means by which it may be removed. The Irish peasant is perfectly contented if he can have the shelter of a cabin in no degree superior to the hut of the Negro; the potatoes and tattered coat of the former are little more expensive and certainly less sufficient for his comfort than the clothing and food of the latter; yet the Irishman will work from morning till night for six pence a day, not because he has less pleasure than the other in idleness, but because he can hardly by his utmost exertions supply even his few and simple wants, because he inhabits a country in which the population is so dense and the competition for land consequently so excessive, that he cannot obtain the small plot of ground whence he derives his support without paying for it a price which compels him not only to accept of employment when offered to him, but to seek for it as the greatest blessing he can obtain. The Jamaica negro maintains himself like the Irishman by the produce of an acre or two of land; but instead of paying for it a rent of six or seven pounds an acre, he has it for nothing, and consequently were it not for the driver and his whip he would not be compelled to labour more than the few days in the year which would suffice for the cultivation of his provision ground. If

the Irishman had his land also rent free, not a great many more days' labour would supply him with his daily mess of potatoes, and he too would probably prefer passing the remainder of his time in idleness to any attempt to improve his condition; but he knows that were he to indulge his inclination, he has to fear the visit of a driver of another kind, armed not indeed with a cart whip, but with what is not less formidable, a warrant of distress to eject him from his cabin and to sell his crop for the payment of his rent and of his tithe, and he therefore labours in order to secure himself and his family from starvation. It is clear that if Jamaica were as densely peopled as Ireland, and the competition for land as great, the negroes would learn like the Irish to look upon employment as a favour, and would be happy to be supplied with regular work in order to earn the means of paying the rent of their provision grounds. Now I am far from saying that so very large an increase of population is to be desired; on the contrary I am deeply sensible of the evils of such a state of things, but I think that it would be greatly for the real happiness of the Negroes themselves, if the facility of acquiring land could be so far restrained as to prevent them, on the abolition of slavery, from abandoning their habits of regular industry. Nor do I see any insuperable difficulty in effecting this object; on the contrary I believe that it might be accomplished by a very simple process, which would not only be the means of so preserving the planters from the ruin with which they would be overwhelmed by emancipation unaccompanied by any precautions, but also contribute not a little to relieve them from their present distress.

If the necessity of paying for his land operates so powerfully in stimulating the Irish peasant to industry, the enquiry naturally suggests itself whether the same necessity might not be imposed on the Negro? While there is so great an abundance of land, it is true that rent properly speaking cannot be exacted, but there seems to be no reason why a tax should not be imposed upon land, or why this payment should not produce the same effect as the other. Accordingly it is to the imposition of a considerable tax upon land that I chiefly look for the means of enabling the planter to continue his business when emancipation shall have taken place; and having in the preceding pages explained the principle of the measure [by] which I think that slavery may be safely abolished, I will now endeavour to give not its details but its most important heads, and to show in what manner the views I have exposed seem to be capable of being practically carried into effect.

I should propose then—

1st that at the same time that the slaves are declared free, a uniform tax should be imposed on land at a rate per acre calculated in such a manner as to make it produce an income of which the amount should be determined in the manner I shall hereafter mention.

2nd. The only land exempt from this tax to be that which during the last two years shall actually have borne a crop of canes or of other exportable produce.

3d. The Tax to be payable half yearly; and on all land occupied for the first time after its imposition to be payable in advance—that is to say, no person to be permitted to commence the cultivation of Land which has been granted but which has hitherto been made no use of, without paying down half a year's tax. Land still in the possession of the Crown should not be alienated except by sale and a minimum price of at least 2 years' tax should be established.

4th. The provision grounds and huts now occupied by the Slaves to be declared to be the property of the planters, the growing crops however to belong to the former on their paying to their masters the amount of $\frac{1}{2}$ a year's tax.

5th. All persons holding land to make a return of the same to the nearest police magistrate in order to their being assessed to the tax; the returns so made to be transmitted to the Surveyor General to be verified; all Lands not included in these returns to revert to the Crown, power being however reserved to parties holding grants and absent from the island, to recover their land on claiming it within a certain time and on paying the arrears of tax due in respect of it.

6th. The land and growing crops to be made liable to seizure for non payment of the tax, and this to take precedence of every other claim upon it.

7th. The illegal occupation of Land to be punishable by forfeiture of the growing crops and all other property found thereon and by three months hard labour in the Parish Work House.

8th. Stipendiary Magistrates to be appointed in every Parish holding their situations from the Governor and during his pleasure.

9th. These Magistrates to have a summary jurisdiction in all disputes between labourers and their masters, and to have power to punish, either by imprisonment with hard labour or by not more than 50 lashes, all vagrants, and all labourers who refuse to support their families, or who being in debt to their masters refuse to work for the wages offered them, without being able to shew that they are earning higher wages elsewhere.

10th. In order to defray the expense of supporting Negro Children and the old and infirm who have no relations able to take care of them, the Vestry of each Parish to be empowered to impose a rate on all land growing provisions.

11th. On the imposition of the land tax, all other Colonial taxes to be repealed with the exception of those imposed for the regulation of trade by British Acts of Parliament, and such duties on the importation of provisions as may be required in order to prevent the home produce from being discouraged by the land tax.

12th. The amount of Revenue to be levied by the land tax to be

such as to make good the loss occasioned by the repeal of other taxes, to defray the expense of the encrease of the Surveyor General's Department which will be necessary, and also to pay the Salaries of the Stipendiary Magistrates, leaving a surplus for the purpose mentioned in the following article.

13th. A loan to be raised on the credit of this Country for the purpose of being advanced under the direction of the Commiss^{rs}. now sitting under the West India Relief Bill,¹ to persons desirous of discharging existing incumbrances on West Indian estates; the advances so made to bear an interest of £5 per cent. and to be secured on mortgage on the estates relieved; the individual borrowers to make their payments into the Colonial Treasury; and each Colony to be responsible for the due payment of the interest and the gradual discharge of the principal of so much of the loan as should be advanced on estates within it; the security to this country being first the sums recovered from the mortgagees, next the produce of Parliamentary duties, and lastly the surplus of the land tax. . . .

The last accounts from Jamaica make it perfectly evident that the willing co-operation of the Legislature of that colony at least is not to be expected, and that in order there to effect any improvement, it will be absolutely necessary that the supreme authority of the Imperial Parliament should be exerted. That the British Legislature has both the right and the power to interfere between the masters and their Slaves seems to be so obvious, that I cannot conceive its admitting of the slightest doubt; the existence of slavery for a single hour in fact depends upon the support given to the planters by the naval and military power of this Country, and we may surely insist upon prescribing the terms on which the assistance is to be afforded to them. But though I think the Mother Country has a clear right to insist upon the obedience of the colonies upon this subject, I am quite ready to agree that it is a right which cannot be used too sparingly, and that it would for many reasons which it is needless to state, be peculiarly inexpedient to impose any tax on the Legislative Colonies by the authority of the British Parliament. In order therefore to bring into operation the measure of which a sketch has been given, trenching as little as possible on the privileges claimed by the Colonial Legislatures, I should propose the following course.

Let an Act of Parliament be passed declaring that from the 1st January 1835 Slavery should be considered as at an end in the British dominions, and that all the King's subjects of whatever colour, should from that day be entitled to the full enjoyment of all civil rights, and let provision at the same time be made for granting, as

¹ By this Bill a loan of £1,000,000 was made to the West Indies in compensation for losses due to hurricanes and to a slave revolt in Jamaica, which was to receive half of the money: in addition £57,000 was granted to the Crown Colonies to compensate them for the restraints imposed by the Order in Council of November 1831, which none of the 'Chartered Colonies' had been induced to accept.

soon as Slavery should actually have ceased, that assistance by way of Loan which I have already described to all those colonies which should think proper to pass Acts to secure the repayment of the advance to be so made to them, by the imposition of the proposed land tax, and by the adoption of the other regulations I have mentioned. Let it also be enacted that a reduction of the duties on Colonial produce should take place at the same time as the abolition of Slavery, and that those Colonies which should think proper to put an end to slavery without waiting for the day appointed by the British Statute, should have the immediate benefit of this reduction. . . .

I think that the attention of Parliament should be called to the question in the King's Speech, and notice given by L^d. Althorp¹ on the first day of the Session of a Motion for the reappointment of the Committee of last Session. This Committee having proceeded so far in the investigation, it would certainly be proper that the plan of the Gov^t. should be submitted to it in the first instance. . . .

H. Decr. 31/32.

4

ABOLITION OF SLAVERY ACT 1833 [EXTRACTS]

(3 & 4 *Will. IV*, *cap.* LXXIII.)

An Act for the Abolition of Slavery throughout the British Colonies; for promoting the Industry of the manumitted Slaves; and for compensating the Persons hitherto entitled to the Services of such Slaves.

Whereas divers Persons are holden in Slavery within divers of His Majesty's Colonies, and it is just and expedient that all such Persons should be manumitted and set free, and that a reasonable Compensation should be made to the Persons hitherto entitled to the services of such Slaves for the Loss which they will incur by being deprived of their Right to such Services: And whereas it is also expedient that Provision should be made for promoting the Industry and securing the good Conduct of the Persons so to be manumitted, for a limited Period after such their Manumission: And whereas it is necessary that the Laws now in force in the said several Colonies should forthwith be adapted to the new State and Relations of Society therein which will follow upon such general Manumission as aforesaid of the said Slaves; and that, in order to afford the necessary Time for such Adaptation of the said Laws, a short Interval should elapse before such Manumission should take effect, be it therefore enacted . . . That from and after the First Day of August One thousand eight

¹ Lord Althorp was Chancellor of the Exchequer and leader of the Ministry in the House of Commons. Though a man of only moderate abilities, and considered when he took office to be merely a respectable country gentleman, his simplicity and absolute honesty of purpose caused him soon to become the most popular leader the House of Commons had ever had.

hundred and thirty-four all Persons who in conformity with the Laws now in force in the said Colonies respectively shall on or before [Aug. 1, 1834] have been duly registered as Slaves in any such Colony and who on [Aug. 1, 1834] shall be actually within any such Colony, and who shall by such Registries appear to be on [Aug. 1, 1834] of the full Age of six years or upwards, shall by force and virtue of this Act, and without the Person's Execution of any Indenture of Apprenticeship, or other Deed or Instrument for that Purpose, become and be apprenticed Labourers; provided that, for the Purposes aforesaid, every Slave engaged in his ordinary Occupation on the Seas shall be deemed and taken to be within the Colony to which such Slave shall belong.

II. And be it further enacted, That during the Continuance of the Apprenticeship of any such apprenticed Labourer such Person or Persons shall be entitled to the Services of such apprenticed Labourer as would for the Time being have been entitled to his or her Services as a Slave if this Act had not been made.

III. Provided also, and be it further enacted, That all Slaves who may at any Time previous to the passing of this Act have been brought with the Consent of their Possessors, and all apprenticed Labourers who may hereafter with the like Consent be brought, into any Part of the United Kingdom of Great Britain and Ireland, shall from and after the passing of this Act be absolutely and entirely free, to all Intents and Purposes whatsoever.

IV. And whereas it is expedient that all such apprenticed Labourers should, for the Purposes hereinafter mentioned, be divided into Three distinct Classes, the First of such Classes consisting of praedial apprenticed Labourers attached to the Soil, and comprising all Persons who in their State of Slavery were usually employed in Agriculture, or in the Manufacture of Colonial Produce or otherwise, upon Lands belonging to their Owners; the Second of such Classes consisting of praedial apprenticed Labourers not attached to the Soil, and comprising all Persons who in their State of Slavery were usually employed in Agriculture, or in the Manufacture of Colonial Produce or otherwise, upon Lands not belonging to their Owners; and the Third of such Classes consisting of non-praedial apprenticed Labourers, and comprising all apprenticed Labourers not included within either of the Two preceding Classes; be it therefore enacted, That such division as aforesaid of the said apprenticed Labourers shall be carried into effect in such Manner and Form . . . as herein-after mentioned: Provided always, that no Person of the Age of Twelve Years and upwards shall . . . be included in either of the Two classes of praedial apprenticed Labourers unless such Person shall for Twelve Calendar Months at the least next before the passing of this present Act have been habitually employed in Agriculture, or in the Manufacture of Colonial Produce.

V. [Apprenticeship of the praedial Labourers not to continue beyond Aug. 1 1840.]

VI. [Apprenticeship of the non-praedial Labourers not to continue beyond Aug. 1 1838.]

VII. And be it further enacted, That if before any such Apprenticeship shall have expired the Person or Persons entitled for and during the Remainder of any such Term to the Services of such apprenticed Labourer shall be desirous to discharge him or her from such Apprenticeship, it shall be lawful for such Person or Persons to do so by any Deed or Instrument to be by him, her, or them for that Purpose made and executed; which Deed or Instrument shall be in such Form and shall be executed and recorded in such Manner and with such Solemnities, as shall for that Purpose be prescribed under such Authority, and in and by such Acts of Assembly, Ordinances, or Order in Council, as hereinafter mentioned: Provided nevertheless, that if any Person so discharged . . . by any such voluntary Act . . . shall at that Time be of the Age of Fifty Years or upwards, or shall be then labouring under any such Disease or mental or bodily Infirmary as may render him or her incapable of earning his or her Subsistence, then . . . the Person or Persons so discharging any such apprenticed Labourer as aforesaid shall continue and be liable to provide for the Support and Maintenance of such apprenticed Labourer during the remaining Term of such original Apprenticeship, as fully as if such apprenticed Labourer had not been discharged therefrom.

VIII. And be it further enacted, That it shall be lawful for any such apprenticed Labourer to purchase his or her Discharge from such Apprenticeship, even without the Consent, or in Opposition, if necessary, to the Will of the Person or Persons entitled to his or her Services, upon Payment to such Person or Persons of the appraised Value of such Services. . . .

IX. And be it further enacted, That no apprenticed Labourer shall be subject or liable to be removed from the Colony to which he or she may belong; and that no praedial apprenticed Labourer who may in manner aforesaid become attached to the Soil, or liable to perform any Labour in the Service of his or her Employer or Employers, except upon or in or about the Works and Business of the Plantations or Estates to which such praedial apprenticed Labourer shall have been attached, or on which he or she shall have been usually employed on or previous to [Aug. 1, 1834]; Provided, nevertheless that, with the Consent in Writing of any Two or more Justices of the Peace holding such special Commission as herein-after mentioned, it shall be lawful for the Person or Persons entitled to the Services of any such attached praedial apprenticed Labourer or Labourers to transfer his or their Services to any other Estate or Plantation within the same Colony to such Person or Persons belonging; which written Consent

shall in no Case be given, or be of any Validity, unless any such Justices of the Peace shall first have ascertained that such Transfer would not have the Effect of separating any such attached *praedial* apprenticed Labourer from his or her Wife or Husband, Parent or Child, or from any Person or Persons reputed to bear any such Relation to him or her, and that such Transfer would not probably be injurious to the Health or Welfare of such attached *praedial* apprenticed Labourer. . . .

X. And be it further enacted and declared, That the Right or Interest of any Employer or Employers to and in the Services of any such apprenticed Labourers as aforesaid shall pass and be transferable by Bargain and Sale, Contract, Deed, Conveyance, Will or Descent, according to such Rules and in such Manner as shall for that purpose be provided . . . ; provided that no such apprenticed Labourer shall, by virtue of such Bargain and Sale, Contract, Deed, Conveyance, Will or Descent, be subject or liable to be separated from his or her Wife or Husband, Parent or Child, or from any Person or Persons reputed to bear any such Relation to him or her.

XI. And be it further enacted, That during the Continuance of any such Apprenticeship as aforesaid, the Person or Persons for the Time being entitled to the Services of every such apprenticed Labourer shall be and is and are hereby required to supply him or her with such Food, Clothing, Lodging, Medicine, Medical Attendance, and such other Maintenances and Allowances as by any Law now in force in the Colony to which such apprenticed Labourer may belong an Owner is required to supply to and for any Slave being of the same Age and Sex as such apprenticed Labourer shall be; and in Cases in which the Food of any such *praedial* apprenticed Labourer shall be supplied, not by the delivery to him or her of Provisions, but by the Cultivation by such *praedial* apprenticed Labourer of ground set apart for the growth of Provisions, the Person or Persons entitled to his or her Services shall be and is and are hereby required to provide such *praedial* apprenticed Labourer with Ground adequate, both in Quantity and Quality, for his or her Support, and within reasonable Distance of his or her usual Place of Abode, and to allow such *praedial* apprenticed Labourer, from and out of the annual Time during which he or she may be required to labour, after the Rate of Forty-five Hours *per* week as aforesaid, in the Service of such his or her Employer or Employers, such a Portion of Time as shall be adequate for the proper Cultivation of such Ground, and for the raising and securing the Crops thereon grown;¹ the actual extent of which Ground

¹ The question of the distribution of these hours of work was for a time the subject of acute controversy in Jamaica. The local Abolition Act required the master to allow his apprentice four and a half hours for the cultivation of his provision ground: the remaining forty hours and a half it was to the interest of the negro to finish by midday Friday, but many of the planters preferred to spread the work over five full days. The upshot was that in some parishes one system was in force, in others the other.

[and other details] shall and may, in each of the Colonies aforesaid, be regulated under such Authorities, and by such Acts of Assembly, Ordinances or Orders in Council as herein-after mentioned.

XII. And be it further enacted, That, subject to the Obligations imposed by this Act, or to be imposed by any such Act of General Assembly [etc.] . . . all and every the Persons who on [Aug. 1, 1834] shall be holden in Slavery within any such British Colony, as aforesaid shall upon . . . [Aug. 1, 1834] become and be to all Intents and Purposes free and discharged of and from all Manner of Slavery, and shall be absolutely and for ever manumitted; and that the Children thereafter to be born to any such Persons, and the Offspring of such Children, shall in like Manner be free from their Birth, and that from and after [Aug. 1, 1834] Slavery shall be and is hereby utterly and for ever abolished and declared unlawful throughout the British Colonies, Plantations, and Possessions Abroad.

XIII. And . . . be it . . . enacted, That if any Child who on [Aug. 1, 1834] had not completed his or her Sixth Year, or if any Child to which any Female apprenticed Labourer may give Birth on or after [Aug. 1, 1834] shall be brought before any Justice of the Peace holding any such Special Commission as herein-after mentioned, and it shall be made to appear to the Satisfaction of such Justice that any such Child is unprovided with an adequate Maintenance, and that such Child hath not completed his or her Age of Twelve Years, it shall be lawful for such Justice, and he is hereby required, on behalf of any such Child, to execute an Indenture of Apprenticeship, thereby binding such Child as an apprenticed Labourer to the Person or Persons entitled to the Services of the Mother of such Child, or who has been last entitled to the Services of such Mother; but in case it shall be made to appear to any such Justice that such Person or Persons . . . is or are unable or unfit to enter into any such Indenture, and properly to perform the Conditions thereof, then it shall be lawful for such Justice and he is hereby required by such Indenture to bind any such Child to any other Person or Persons to be by him for that Purpose approved, and who may be willing and able to perform such Conditions; and it shall by every such Indenture of Apprenticeship be declared whether such Child shall thenceforward belong to the Class of attached praedial apprenticed Labourers, or to the Class of unattached praedial apprenticed Labourers, or to the Class of non-praedial apprenticed Labourers; and the Term of such Apprenticeship of any such Child shall by such Indenture be limited and made to continue in force until such Child shall have completed his or her Twenty-first Year, and no longer; and every Child so apprenticed shall . . . be subject to all such and the same Rules and Regulations . . . as any other such apprenticed Labourers . . . Provided always, that the said Indenture of Apprenticeship shall contain sufficient Words of Obligation upon

the Employer to allow reasonable Time and Opportunity for the Education and Religious Instruction of such Child.

XIV. . . . And be it enacted, That it shall and may be lawful for his Majesty to issue, or to authorize the Governor of any such Colony as aforesaid . . . to issue . . . One or more Special Commission or Commissions to any one or more Person or Persons, constituting him or them a Justice or Justices of the Peace . . . for the special Purpose of giving effect to this present Act . . . and every Person to or in favour of whom any such Commission may be issued shall . . . without any other Qualification, be entitled and competent to act as a Justice of the Peace within the limits prescribed by such his Commission for such special Purposes aforesaid, but for no other Purposes: Provided nevertheless, that nothing herein contained shall prevent . . . any Person commissioned as a Justice of the Peace for such Special Purpose as aforesaid from being included in the General Commission of the Peace for any such Colony. . . .

XV. And be it further enacted, That his Majesty shall be and he is hereby authorised to grant to any Person or Persons, not exceeding One hundred in the whole, holding such special Commission or Commissions . . . Salaries at and after a Rate not exceeding in any Case the Sum of Three hundred Pounds Sterling *per Annum*, which Salary shall be payable so long only as any such Justice of the Peace shall retain any such Special Commission, and shall be actually resident in such Colony, and engaged in the Discharge of the Duties of such his Office. . . . Provided also that there be annually laid before both Houses of Parliament a List of the Names of all Persons to whom any such Salary shall be so granted . . . specifying the Date of every such Commission, and the Amount of the Salary assigned to every such Justice of the Peace.

XXIV. And whereas, towards compensating the Persons at present entitled to the Services of the Slaves to be manumitted and set free by virtue of this Act for the loss of such Services, His Majesty's most dutiful and loyal Subjects the Commons of Great Britain and Ireland in Parliament assembled have resolved to give and grant to His Majesty the Sum of Twenty Millions Pounds Sterling; be it enacted, That the Lords Commissioners of His Majesty's Treasury of the United Kingdom of Great Britain and Ireland may raise such Sum or Sums of Money as shall be required from Time to Time under the Provisions of this Act, and may grant as the Consideration for such Sum or Sums of Money Redeemable Perpetual Annuities or Annuities for Terms of Years . . . upon such Terms and Conditions . . . as may be determined upon by the said Commissioners of the Treasury, not exceeding in the whole the Sum of Twenty Millions Pounds Sterling. . . .

XXXIII. And for the Distribution of the said Compensation Fund, and the Apportionment thereof amongst the several Persons

who may prefer Claims thereon, be it enacted, That it shall and may be lawful for His Majesty from Time to Time, by a Commission under the Great Seal of the United Kingdom, to constitute and appoint such Persons, not being less than Five, as to His Majesty shall seem meet, to be Commissioners of Arbitration for inquiring into and deciding upon Claims to Compensation which may be preferred to them under this Act. . . .

5

REPORT OF SPECIAL MAGISTRATE DAUGHTREY¹

(*P.P.*, 1835, 1.)

Whitehall, St. Elizabeth's, 30 June 1835.

MY LORD,

In supplying a brief report of the state of things in this district, I am enabled to assure your Excellency, that amidst some things to discourage there are many indications of real improvement. Complaints, though still sufficiently numerous, have decreased on both sides. For the sake of method, I will place the observations I may have occasion to make under a few separate heads: and first, of the apprentice—incivility and insolence to those in authority on the property were amongst the most frequent complaints against them at the commencement of the change, women and young people being peculiarly the aggressors; loose themselves from some of their former restraints, they set their unruly tongues also at liberty. This, though naturally enough to be expected, was by no means to be allowed. By resisting the offence in every instance, after the proper means for this purpose were provided, with moderate but certain punishment, and causing my determination to do so to be generally known, the evil has in a great degree been overcome. The cases of this kind brought before me at present seldom exceed two or three in a month. This I consider to be a great point gained; for the violent jabber of one often excited the rest, and beginning in insolence, it always led to more or less of perverse and wayward indolence, and often ended in positive insubordination. The old system never witnessed anything like the orderly behaviour which prevails among the negroes in this first year of the apprenticeship; I speak confidently as to this district, and from the best information.

Next to the complaint of insolence, and to which, as I have hinted, it often led, was that of open and audacious disobedience. This crime, however, I have the satisfaction to state, is now as rare, either in individuals or gangs, as it was at one time unhappily common. Better advance and the steady application of the law have corrected it.

¹ Mr. John Daughtrey was special magistrate for the parish of St. Elizabeth, in the south-west of the island. He was one of the ablest and most impartial of the magistrates.

Under another very important head, loss of time by late turning out and other means, I am unable to report quite so favourably; but my diary will show that complaints of this description are gradually diminishing, under that salutary clause of the law which, for the wilful loss of estates' time, imposes the forfeiture of an extra portion of their own.

A few weeks ago charges for pilfering were so numerous, that I felt almost compelled to conclude that dishonesty had increased; but I am assured by very competent authority that it is otherwise, that it is the discovery of the crime that is now more common, and not its perpetration; the crime itself could not have increased, for under the old system it was universal; the quantity of it was in proportion to the opportunity, and had no other rule.

To obtain the best evidence I could on so material a point, I have taken occasion to ask the senior constable of the parish, an active-minded observing man, whose duty leads him into every corner, and among every class of the population, whether, in his opinion, there was more or less produce stolen by the negroes than before the first of August? He replied, 'Certainly much less, for that the free poor people were now generally complaining that they could not get sugar, coffee, &c., as heretofore, but were obliged to go to the stores for them, and that such he himself knew to be the fact.' I have since assured myself by other inquiries that this contraband traffic is notoriously reduced. I by no means intend to assert that dishonesty does not still prevail to a lamentable extent, but that, so far from having increased, as some affirm, the change of system has placed a degree of restraint upon the conduct of the apprentice, even in this respect, which did not before exist.

No charge perhaps has been of late more frequently urged in a loose and general way against the apprentices than neglect of their provision grounds. It is one which, if true, must be so serious in its consequences, that whenever I hear such remarks made, I always say, 'Bring a specific charge; I will if necessary go myself to the ground with practical and impartial persons; only satisfy me of the fact, and the law, which provides so clearly and sufficiently for the evil, shall take effect.' No such specific charge has, however, yet been brought forward; the neglect, therefore, has evidently not been ascertained, but is only suspected. Some of the more worthless never worked grounds, and there are such still. That provisions have been unusually scarce is unquestionable; but the respectable head people, to whom I have made a particular appeal on the subject, assure me that it does occasionally occur at this time of the year, but will be very temporary, as there is an abundance coming forward; that it is the interval just between the exhaustion of the old and the ripening of the new provisions and of the corn, which are late this season on account of the long period of dry weather.

I believe this to be the whole truth of the case. It is a circumstance which can scarcely escape one's notice, that the scarcity has not been confined to the negro, but has been equally felt by all other classes, and from the same cause; to them, however, it is a misfortune for which the season may be fairly blamed, but not so to the negro: to [him] nothing is misfortune, everything is his fault.

With regard to the great point of all, the proportion of labour performed during the legal hours, I am induced to speak with somewhat less confidence, because opinions here, assertions at least, are to the best degree conflicting. As regards some estates, I have from the managers themselves the most satisfactory assurances on the subject, whilst others constantly and loudly complain of insufficient work. Wherever a charge of this nature has been distinctly brought forward and the proof adduced, I have always awarded compensation out of the negro's own time; and where a body of people were delinquents, in order to secure its performance and for the greater effect, have directed that the penal labour should be performed under the awe of a small detachment of police.

The application of these means has generally prevented a second complaint, always, I think, a third.

That a diminution of labour does not universally exist, even in the proportion of the diminished time of labour, is proved by the fact, that where it is performed by the task, as in peeling ginger, for instance, such daily task is the same as under the old system, and is pretty generally accomplished. I trust that by degrees it will be found possible to apply the task system to nearly all other kinds of labour. It would effectually secure an increase in quantity, and, if the task were reasonable, a more contented and cheerful performance of the labour itself.

It is an interesting circumstance in the present condition of things, as applied to sugar estates, that in this neighbourhood the plough is now taking place of the barbarous, unsightly hoe-gang, and with complete success. It is found, too, that even negroes can guide and manage it, that they can see straight enough, which till of late seems to have been generally disbelieved.

The introduction of the plough will be an immense economy of labour, and it is doubtless but one of many of which the drudgery of the old system abundantly admits.

But I cannot conclude my remarks upon the negroes without noticing the effect which the apprentice system has already had on their civilization. Having now spent more than a year in daily intercourse which the class and in parts of the Island where they had previously been least neglected, it must be owing either to prejudice or dulness if I am an incompetent judge. In speaking of improvement of this nature, I must be understood to limit it to mere matters of civilization and discipline, as regards most of them. Here and there

is to be discerned, I think, the obscure beginnings of a sense of moral obligation and of religion; but in general they are still without principle. It is, however, to the intercourse, the knowledge, and the restraints derived from public worship and the ministers of religion that their civilization must be chiefly traced. I seldom see an instance now of the wild and unreasonable behaviour so common about the time of change. They always behave with comparative mildness and self-restraint in my presence; they listen calmly to anything addressed to them; and, as one of the more sensible overseers said to me the other day, 'Sir, I declare they understand me better.' To be sure they do; and it is equally clear that they can make themselves better understood. I have scarcely a doubt that they have learnt more English during the last year than in the 10 preceding. Multitudes are preparing to marry, and in by far the greater number of instances they unite themselves with the proper persons, the mothers of their children. The woman feels elevated when she is a wife, and the man has more respect for himself from having done what was right. It removes a bar to their attendance on Divine worship, and it will tend to fix them on the property to which they are now attached when free.

These are a few of the good signs. Nothing can be more peaceable and free from turbulence; no community can be living in more perfect security than the white population of this part of the Island, an immense boon, I should think. Generally, I may add, the negroes are coming to understand their exact position, and on the whole to be not dissatisfied with it. It was otherwise to some extent at first. The actual change did not by any means realize the expectations they had been led to form of it; they now, however, see that in their approach to freedom, if there is much to be gained, there is something likewise to be surrendered.

Too much must not be immediately expected from them as the consequence of the change, their radical improvement will be a work of slow degrees; it will require a generation or two, with all appliances and means to boot, to wear away the debasing effects of slavery from the negro mind: it was a deeply demoralizing system. The Creole negro, it is very evident, made a much worse slave, and in some respects a worse man, than the native African; he is neither so industrious, so docile, nor so honest. Cunning and duplicity appear to be wrought into the very nature of those born and trained in slavery; they wear their defensive weapons against unjust power. Old Guinea negroes, on the other hand, have always been pointed out to me as among the most inoffensive and trustworthy. Slavery has, therefore, been capable of ingrafting vices upon barbarism itself.

How deeply is it to be regretted, that a valuable year of the apprenticeship period should have passed away without any attempt to improve the race by the long-talked of system of education.

With respect to masters and managers, I see little in their ostensible behaviour that can be objected to: I fear, however, their benevolent feelings towards the negro are not on the increase. Some of them indeed seem to dislike him the more, now he is escaping from their power; they reproach the apprentice for retaining many of the habits and principles of slavery, whilst they find it impossible to divest themselves of the feelings and prejudices which slavery has unfortunately fixed on their own minds. We must, however, give them time to change as well as the negro; meanwhile, it would be well if some of them were not negro managers; for the feeling of the old system unfits them, in a great degree, for administering the new.

There is nothing impracticable in the apprentice system of labour, would all parties bend their efforts to make the most and best of it; it would not only work, but work well. Where it is failing to do so, the fault generally is neither in the negro, the law, nor the magistrate, but in the manager. A bad overseer is now often allowed to plead the new system in [excuse] for his want of success; whereas want of success, it is well known, whatever were the cause, was before crime enough to procure his dismissal. Active, intelligent, persevering young men, unpractised in the bluster and growl of the old Busha¹ system, who maintain a firm and uniform, but civil bearing towards the negroes; who treat them like fellow beings, and are quite aware that the most likely way to make a man a brute is to call him one and treat him like one; these are the kind of persons who will be found competent to grapple with the difficulties of the new system and overcoming them all, to work it successfully.

I have, &c.

(signed) J. DAUGHTREY.

6

DESPATCH FROM SMYTH TO GLENELG²

(*P. P.*, 1836, xlix.)

Camp House, Demerara, 19 March 1836.

MY LORD,

In the newspapers which arrived in this colony by the last mail, the particulars are given of a very numerous meeting held at Birmingham for the purpose of petitioning Parliament for the complete and immediate abolition of the apprentice system, and the consequent emancipation of the labourers in the West India colonies from the control of the special justices.³ As, from the influential character of

¹ Busha is a West Indian term for the manager of a plantation.

² Sir James Carmichael Smyth, an officer of engineers, was Governor of British Guiana from 1833 until his death in 1838. He was a strong and able Governor and, unpopular though his policy was with the planters, was highly esteemed by all.

³ This agitation for the abolition of the apprenticeship was the work of the extreme anti-slavery party under the leadership of the Quaker Joseph Sturge. At this time

several of these gentlemen who are stated to have addressed the meeting, there can be little doubt that the subject will be brought before Parliament, I have conceived that, in the straightforward discharge of my duty, it is incumbent upon me, as the officer to whom the administration of the government of certainly the second West India colony in point of produce, wealth and importance, is at this moment intrusted, respectfully to lay before your Lordship my views upon the proposed measure; I assure your Lordship that I should much regret and lament the doing away of the apprenticeship. I deprecate any sudden change or the abandonment of a system which, in British Guiana at any rate, so completely answers. Neither the planters nor the labourers are prepared for any immediate alteration. Of other colonies I presume not to speak nor to offer any opinion; but in British Guiana, not only the letter, but the spirit of the Act of Parliament abolishing slavery and introducing apprentice labour have been so strictly enforced, that no act of tyranny, of cruelty or of oppression can take place without the speedy detection, exposure and punishment of the person so offending. Not the slightest corporal punishment is or can be inflicted but by the sentence of a special justice or that of an inferior criminal court, presided by a sheriff. Not only not a lash can be given that is not reported to the officer administering the government, but if he has reason to think the sentences severe, the minutes of the evidence can be forthwith sent for and examined. This sort of jealous vigilance, with which the administration of the criminal law is watched over in this colony, has (I am well aware) made me very unpopular with those who are advocates for more stern and severe measures; the results, however, of the line of conduct pursued in British Guiana, as shown in the happiness and tranquillity of the labourers, and the immense additional quantity of produce exported since the abolition of slavery, ought to satisfy the most sceptical.

In thus advocating the continuance, for the present, of a system which, to a hasty observer, may appear to be too favourable to the interests of the planter, as put in opposition to those of the labourer, I beg to explain to your Lordship, that I am influenced solely by what I conceive to be the general good, and that the apprentice system (if carefully superintended in its details) appears to me to be equally necessary and advantageous to both parties. If I was susceptible of being influenced by unworthy motives, the continued opposition and ill-will I have experienced on the part of the most influential of the planters would rather have induced me to have arrived at the conclusion, that the apprenticed system ought to be abolished. I am, however, of a decidedly contrary opinion; the

the movement seemed unlikely to succeed, but the visit of Sturge and some associates to the West Indies in the winter of 1836 and the shocking 'case of James Williams' discovered by them in Jamaica entirely transformed the situation.

managers and the labourers are daily approximating; not only wages for additional labour are becoming more common, but large fields of sugar canes are weeded or cut down by agreement. Labour is, in fact, finding its level and its value; nothing can be going on better, and I do not think that the permanent well-being of the labourer would be accelerated by any immediate change of system. We have every thing to expect from persevering in the present plan; it is impossible to foretel what mischievous effects a sudden and (in my humble opinion) an uncalled-for change might produce.

I ought, perhaps, to apologize for having thus obtruded my opinions upon your Lordship, but my anxiety for the general welfare of this province, and the good of His Majesty's service, will, I am confident, to your Lordship appear a sufficient excuse.

I have, &c.

(signed) J. CARM¹ SMYTH.

7

PRIVATE AND CONFIDENTIAL CIRCULAR OF GLENELG
TO GOVERNORS OF WEST INDIA COLONIES, MAURITIUS,
AND CAPE OF GOOD HOPE

(C. O. 318/141: P. R. O.)

Downing Street,
2nd April 1838.

SIR,

Referring to my Public Circular Despatch of this date, I think it necessary in this more private form to apprise you that the state of public feeling in this Kingdom respecting the apprenticeship system, is such as to justify the most serious anxiety as to the possible consequences on the future state of the British West Indies. At the distance at which you are placed, you may very probably under-rate the force of public opinion which prevails here on this subject.

Attempts have been made by different Members of Her Majesty's Government in their places in Parliament to convey a more correct impression of the truth, and this was especially done by Sir G. Grey¹ in the Speech which he delivered in the House of Commons on the 29th of March. But it is in truth scarcely possible to possess the public mind with just and moderate views on this question, and until the Praedial apprenticeship system is brought to a close, you must be prepared to discharge your duties under the disadvantage of an agitation, which will not fail to misrepresent and discolour even the most meritorious of your public acts. Internal tranquility in the

¹ Sir George Grey was at this time Under-Secretary for the Colonies. See p. 171, note 1.

Colonies can perhaps hardly be anticipated under such circumstances. Consequently if it be possible without incurring increased risk from the public discussion of the question and with the concurrence of the local Legislatures to bring this system to an earlier close than that fixed by law for its final termination it will be an object of the highest importance to accomplish that result.¹ It is at the same time most desirable that this change should be accompanied by such enactments as may be necessary for the maintenance of those persons who from being incapacitated from procuring their own living, have hitherto possessed a legal claim on their past employers for support, and there will be other points the importance of which will not escape your attention as essential to a good understanding between the several classes of the community in their altered relation to each other. The Act passed by the Legislature of Antigua in 1834 for the abolition of Slavery² may afford you some useful suggestions on this head.

I must convey to you in the strongest terms the assurance that no further compensation will be given by this country for the loss of the services of the apprenticed labourers.

I have, &c.

(signed)

GLENELG.

8

PROTEST OF ASSEMBLY OF JAMAICA (JUNE 1838)

(*P. P.*, 1839, xxxv.)

The legislative powers of Jamaica, for near two centuries, have been exercised by the Governor and Council, and an Assembly elected by the free choice of the people; the Acts they pass being subject to the disallowance of the Sovereign.

Under this constitution the island has prospered; the number of inhabitants has increased to near half a million; her commerce, the production of agriculture, monopolized by the parent state, and taxed at her pleasure, has afforded prodigious sums to the general revenue, and has encouraged, beyond calculation, the manufacturing industry and mercantile marine of the empire.

By the Act of the British Parliament, passed in the 18th year of

¹ The defeat of the Government on May 22 in a snap division by 96 to 93 on a motion of Sir E. Wilmot for immediate emancipation was met by a later motion, carried by 250 to 178, that it was not advisable to act upon the resolution thus passed; but the West Indian Legislatures, fearing the effect of the agitation upon the apprentices and claiming, in some cases, that the amending Act passed during the session made the apprenticeship unworkable, all complied with the hint of the Colonial Office and abolished it by August 1.

² In Antigua opinion among the planters was for some reason in favour of immediate emancipation, and early in 1834 an Act was passed 'for relieving the slave population from the obligations imposed upon them by the recent Act of Parliament', with the result that on August 1 they became entirely free. On the whole, despite some early difficulties, the experiment succeeded.

the reign of George 3, chap. 12, and during the American war, the British Legislature acknowledged it to be the privilege of the colonies to be taxed solely by their own legislatures.

The House of Assembly, with a liberality unknown in other colonies, has ever voluntarily supported the entire charges of the civil government of the colony, and has paid, for many years past, a large portion of the military expenses of the garrison; the House has also armed, clothed, and, when in actual service, paid a well-disciplined militia, for the defence of the island, which, during the late rebellion, mustered 18,000 sabres and bayonets. Our liberality has not been met by any grants from the Imperial Treasury; no school or college has been founded for our youth by the mother country; no church nor hospital has been built for us at her cost; nor do we owe to her the smallest contribution for roads, bridges, or canals.

Jamaica is dependent on the Crown of England, and she admits the right of the English Parliament to regulate the commerce of the empire, but she rejects, with indignation, its claim to make other laws to govern her.

We therefore conclude that this island has of right, confirmed by time, usage, and law, an independent legislature; that, by its authority alone, can taxes or other burthens be imposed on the people of Jamaica, or its laws, when once sanctioned by the Sovereign, be repealed, or altered, or new laws be enacted.

It is unreasonable and unnatural that one nation should assume to pass laws to bind another nation, of whose customs, wants, constitution, and physical advantages and disadvantages, she is, and must be, profoundly ignorant; and whose distance opposes an insurmountable barrier to the attainment of local information, or to the application of remedies for any sudden emergency. The laws enacted, under such circumstances, by the governing nation, will be a code of blunders, even if passed in good faith; and will be the ridicule or terror of the governed,—evaded in days of tranquillity, and, when the governing nation is at war, openly defied and resisted.

We believe that a people will sometimes passively submit to injustice and encroachment, committed by a Sovereign sprung from a race which has ruled over them for ages, and to which they may owe acts of grace and favour: the deeds of a monarch are ascribed to his advisers, and they terminate with his life, and loyalty is preserved for his successor. But no obedience is due to fellow-subjects; their bad government is intolerably odious and heavy, and their best attempts at legislation are received with suspicion and dislike. A people so governed is degraded in its own regard; it beholds itself reduced to the condition of a conquered nation; it is disorganized by imperfect and detested laws. The inhabitants become uneasy and discontented; they have no hope in the future, for the system which oppresses them does not depend on a single life; and they

become open to the intrigues of some rival or ambitious neighbour.

It is not necessary to look back upon the steps by which the British Parliament has usurped the legitimate powers of the Assembly of Jamaica: the monstrous pretexts which have accompanied her usurpation, and the falsehoods and slanders which have been advanced to justify it, it would be useless to complain of or to controvert. When lawgivers consent to sit in judgment on an Assembly, in no respect their inferior, except in extent and magnitude of power; when they condemn, and presume to punish, upon charges kept secret from the accused, they cannot be expected to listen to a defence which would convict them, either of imbecility and cowardice, if they were urged to the injustice by popular clamour, or of fraud and malice, and a thirst for omnipotent authority, if the injustice was the result of deliberation and design.

This House does not dread a comparison with the Commons of England in the success of their legislation. Our laws have not been defied, as by the Irish opponents of tithes; murders are not committed in our island by companies of armed men in open day; nor do bands prowl about at night, setting fire to barns and ricks of corn; nor do our labourers and artisans combine, as of late in Dublin and Glasgow, to raise wages, even by maiming and murder. Our courts are never occupied with the obscenities which disgrace England, nor do our husbands and daughters resort to them to expose their own shame for a money-price. The horrible trade of Burke¹ (and, we fear, of many more), which has given a new word to the English language, was never heard of here; nor have we ever known an instance of parents putting their infant families to death, to save them from the protracted sufferings of starvation. It is not in Jamaica that unfortunate mothers outrage nature, by the destruction of their new-born offspring, to avoid the cruel persecution of a hard-hearted and destroying morality; nor is it under our laws that wretches commit suicide to escape the refuge which is provided for worn-out and aged industry. We have no Corn Laws to add to the wealth of the rich, nor Poor Laws to imprison, under pretence of maintaining, the poor. We cannot, as the English Parliament does, boast of a pauper law which has taken millions from the necessities of the destitute, to add to the luxuries of the wealthy.

While we protest against the usurping power of the British Parliament, and deny their right to pass laws for our government, we cannot overlook the character of the Parliament which affects to regulate and constrain our morals and humanity. Of the three branches, the greatest share of power rests in the Commons. That body has been

¹ William Burke, the famous murderer, used to invite his victims to the lodging-house of an associate, make them drunk, suffocate them, and then sell the bodies to a school of anatomy for the purpose of dissection. He was hanged in January 1829, the people shouting 'Burke him! Burke him!' as he went to his death.

accused before the world, and within its own walls, by a leading member, of the high crime of perjury.¹ The accuser has not been punished, nor the charge refuted; and he, the accuser himself, and his parliamentary followers, are in their turn accused of violating their oaths as often as ecclesiastical matters are the subject of legislation in the House. The House of Commons has also been charged with corruption in the progress through the House of Private Bills.

We, however, assume that the Commons House of Great Britain is pure, and that to our degradation will not be added the ignominy of being governed by unworthy fellow subjects.

We will also acknowledge that they can seize by force on the powers which they do not possess in law or reason; but there cannot be two legislatures in one state. If the British Parliament is to make laws for Jamaica, it must exercise that prerogative without a partner. The freeholders of Jamaica will not send representatives to a mock assembly, nor will representatives be found to accept a service so docked and crippled. The popular branch of the legislature will cease to exist, and if any taxes are demanded, they must be levied at the point of the sword.

The taxation of the colony may perhaps be delegated to the House of Lords, into which was first introduced the infamous Bill for our destruction; and, the first time for many ages, their Lordships in that Bill were permitted to exercise the privilege of laying on British subjects grievous pecuniary penalties. The power of taxing Jamaica may console their Lordships for its deprivation elsewhere.

The Parliament of Great Britain are already overwhelmed with business; and being without time for examining the Colonial Bills that are submitted to them, they must accede, without inquiry, to all the requisitions of the Colonial Secretary; and although we shall in name live under the enactments of the British Parliament, we shall in fact be governed by a Royal Minister. We dread a system of government which has, notwithstanding so many efforts, failed to pacify Ireland, has just caused a rebellion in the Canadas by its capricious policy, and scarcely escaped a war with the United States.²

The Island of Jamaica never will consent to be ruled by men who have, in their proceedings towards them, invaded the ancient statutes of the realm, and usurped the prerogative of the Crown; who have, although not represented amongst them, imposed on her people taxes and penalties, who have set aside trial by jury, and who

¹ The reference is to Daniel O'Connell's charge of perjury against certain Committees of the House of Commons upon disputed elections, in 1837. He was reprimanded by the Speaker, but he repeated the charge and no further action was taken.

² Certain incidents of the Canadian rebellion, and particularly the destruction by British troops of the American steamer *Caroline*, which had been used to support a border foray of American sympathizers in December 1837, had caused considerable tension between Great Britain and the United States; and the Maine boundary dispute was also reaching its acutest phase.

have placed in the hands of one man the power of making law, and of dispensing with law, by proclamation.

The last vestige of slavery was in two years to have been removed; and it is an indiscreet and mischievous zeal which, to hasten its extinction by so brief a space, has marked it by the demolition of our sacred rights.

The legislative independence of Jamaica has ever been the pride of her English conquerors. They have received with joy their coloured fellow colonists into an equal participation of their valued liberty, and they were prepared to rejoice at the extension of the Constitution to the emancipated blacks; but the British Government, by a great fault, if not a crime, has, at the moment when all should have been free, torn from the lately-ascendant class the privileges which were their birth-right; from another class, now the equals of the former, the rights they had long and fortunately struggled for, and from the emancipated blacks the rights which they fondly expected to enjoy with their personal freedom. The boon of earlier freedom will not compensate this most numerous part of our population for the injustice and wrong done to the whole Jamaica people. Gratitude is short-lived, but the pressure of distant and uninformed legislation, in which they have no share, nor any sympathies arising from common origin and race, will be a daily irritation to the Creole Africans; and laws from such a source will be as impatiently endured by them as by their brother colonists.

We, therefore, the members of Assembly, do, for ourselves and for the people of Jamaica, solemnly before God and man, and especially before our fellow subjects and fellow colonists, protest against an Act passed by the British Parliament, intituled, 'An Act to amend the Act for the Abolition of Slavery in the British Colonies.'

We protest against the Proclamation of his Excellency the Governor, dated the 1st of June 1838, which declares the said Act to be in force in this island.

We declare the said Act and Proclamation to be illegal, unconstitutional, and an usurpation of our legislative rights, and of the rights of our constituents; we declare them to be subversive of English law, threatening to the peace of this and our sister colonies, and dangerous to the integrity of the empire.

DESPATCH FROM SIR LIONEL SMITH TO GLENELG
(December 3, 1838) [EXTRACT]¹

(*P. P.*, 1839, xxxv.)

I lament that I am not able by this packet to give your Lordship a very satisfactory account of the progress of voluntary labour; not that there have been combinations or refusals among the black population to work for fair wages and kind treatment; but the three months' grace, which, by the abolition apprenticeship law, was intended to give the labourers time to agree for their old locations, or engage new ones, having expired, and many of them not having entered on terms with their former masters, forcible ejectments are being resorted to, to a considerable extent; and whole families are turned adrift, and exposed to great misery and distress, until they can obtain fresh settlements.

In proportion as these violent proceedings are carried on, and which I have no power to control, discontent and murmur spread amongst the people, and will for some time impede or reduce cultivation, but not to the extent which is here represented as ruinous. Indeed, under all the disadvantages of present appearances, I am still sanguine the pressure for labour for the ensuing crop will yet induce a conciliatory course on the part of the planters, who, I am inclined to think, have resorted to ejectments as a means of abating the price of labour.

We are unfortunately without any wholesome laws to protect the fair rights of masters and servants, and have all the evils of evasion of common agreements by one party, and distrust on the other. I apprehend the friends of the negroes have generally warned them against any contracts of service under the 5 Will. 4, c. 2, on account of the extreme punishment it inflicts of hard labour or forfeiture of wages;² and this, the only law, may said to be useless.

It is true your Lordship has furnished me with the basis of these laws, and others equally emergent, for the deliberation of the House of Assembly; but they were refused to be received, as well as all other business from the Government, by the last House of Assembly; and I have no hope whatever, as far as the returns of the present election have gone, of any better success with the new House, which is to meet on the 18th instant.

¹ Sir Lionel Smith was Governor of the Windward Islands from 1833 to 1836, of Jamaica from 1836 to 1839, and of Mauritius from 1840 until his death early in 1842. In Barbados he had established good relations with the planters, but at the cost of his early popularity with the apprentices: in Jamaica the position was reversed. He seems to have been anxious to deal justly by all, but apt to allow his feelings to override his judgement.

² The Act 5 William IV, cap. 2, was an Act to enlarge the powers of justices of the peace in determining complaints between masters and servants, and provided that servants failing to fulfil their contracts might be sentenced to three months' hard labour: there was no corresponding penalty for masters.

The election law now in existence requires about 15 months' registration to qualify voters for the Assembly, vestries, &c.; consequently nearly 300,000 people, the lately emancipated negroes, must be for some time unrepresented in the House of Assembly.

It is very true they enjoy equal rights with other classes; but if specific laws have been found desirable for the working classes in all free countries, how much more must they be required in a state of society where the proprietor is smarting under the loss of absolute control over his slaves.

It is out of my power to protect these poor people as Her Majesty's Government require, and the English public seem to expect.

I have no apprehension, however, that the people will break out into resistance, but they are in a state of *bitter disappointment*.

I have no hesitation in declaring to your Lordship that nothing is wanting to the success of free labour in Jamaica, but just and fair dealing towards the labourers. Necessity, the great controller of temper and human interests, may yet induce this desirable end; but at present, mismanagement and discontent have greatly suspended industry, and placed the ordinary agriculture of the island in considerable confusion.

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RESOLUTIONS OF PARISH OF PORTLAND, JAMAICA (P. P., 1839, xxxv.)

2 February 1839.

At a public meeting of the freeholders, managers and others interested in the cultivation of properties in the parish of Portland, convened on a requisition to his Honour the Custos,¹ to take into consideration the state of the said parish and its agricultural prospects, holden at the court-house, Titchfield, on Saturday, the 2d day of February 1839, His Honour the Custos being called to the chair, the following resolutions were put and agreed to *nem. con.*:—

- 1st. Resolved, That this meeting view with the greatest alarm and painful apprehension the distracted state of the island, both with regard to its political and agricultural interests.
- 2d. That the proprietors and planters in this parish were so strongly impressed with the necessity of publicly declaring and proving on oath the rapidly declining state of agriculture in it more than three months ago, that a petition was then prepared praying the Honourable House of Assembly to appoint a committee immediately on their meeting, for the purpose of instituting a solemn investigation into the working of the new system by free labour; for they were convinced that the inquiry which the hired magistrates were making at the time would present a picture of the state of the country very much at variance with the truth.

¹ The custos was the principal officer of the parish, which was and still is the unit of local government in Jamaica.

This opinion has been fully confirmed by the reports sent by these gentlemen to the Governor, and transmitted by his Excellency to the Colonial Office. The petition so prepared was placed in the hands of one of the representatives for the parish, but could not be presented in consequence of the dissolution of the Honourable House.

- 3d. That the astonishment of all Europe, particularly that part of it connected with the West India colonies, must be excited at the very extraordinary difference between the flattering testimonials of the hired magistrates and the melancholy details of the planters; perhaps there never was so mysterious a contradiction in the descriptions of the same occurrences.
- 4th. That the avowed intentions of the British Legislature in abolishing slavery have been defeated and frustrated. These intentions, as declared in the preamble to their Bill, were to promote the industry and secure the good conduct of the persons so to be manumitted. But these persons, instead of pursuing industrious habits, are not performing even half a day's work, while they are demanding a rate of wages far too exorbitant for any proprietor to afford, and at the same time are refusing to pay a fair rent for their houses and grounds.
- 5th. That if matters are suffered to progress in this manner, the island of Jamaica must in the course of a few months cease to be recognized as a colony of export.
- 6th. That this meeting consider the disastrous state of affairs attributable to the unconstitutional and clandestine interference of the Baptist faction, and most of the hired magistrates, with the labouring peasantry, whom they strengthen in their habits of idleness and contumacy, by advice which we lament to find has not been discouraged.
- 7th. That this meeting see with the deepest regret that his Excellency the Governor has unhappily been too easily led by misrepresentations which, should he not be undeceived, may probably lead to disastrous results.
- 8th. That they fear the island can never enjoy that repose which it so much needs, until a more liberal and a just policy be pursued by the British Government, and that they consider the super-legislation attempted by Government incompatible with the rights of the people of Jamaica, and the spirit of the times.
- 9th. That in accordance with the wishes of the Commissioners of Correspondence, the clerk of the vestry will receive from time to time the statements and depositions on oath, touching the state of agriculture from proprietors and managers of estates and plantations in the parish, which statements and depositions will be forwarded by the Custos for the information of that board.

(signed) W. WILLIAMS, Chairman.

DESPATCH FROM RUSSELL TO METCALFE¹

(P. P., 1840, xxxv.)

Downing-street, 17th September, 1839.

SIR,

It appears to me upon considering the despatches of your predecessor, and the intelligence received by various parties in this country from Jamaica, that no improvement in legislation, and no ability in government, can secure to the island prosperity and peace unless a better spirit can be infused into the various orders of society.

I am willing to attribute the present exasperation to causes fully equal to the production of such effects; the vast nature of the change from slavery to entire freedom; the anger produced on the one side by the abridgment of the term of apprenticeship fixed by act of Parliament; and the jealousy subsisting on the other that the power of enforcing labour would be surrendered in words, but maintained in reality.

Still, whatever may be the causes, I trust that time and reflection will convince all classes that the ruin, or at least the loss and injury of all classes, must ensue from a continuance of the present animosities.

The owners and proprietors, if they cannot conciliate the negro labourers, will see the cultivation of their estates gradually abandoned, and their lands become less and less productive.

The labourers, if they shall be induced to prefer the mere means of life to the wages and earnings of a comfortable subsistence, will yearly decline in civilization, become an ignorant, degraded class in society, and lose all the advantages which may be secured by a moderate degree of industry and exertion.

It will be to little purpose that the various classes by mutual crimination shall endeavour to throw the largest share of blame on each other. The island will be equally a sufferer; the friends of freedom will equally deplore, the interests of the empire will equally rue, such a result.

Nor as to the blame, will any party escape the censure of an impartial world. It is extravagant to expect from the negro a degree of toil, which a white man in a similar situation would not perform, it is unjust to refuse to the employer of labour that continued exertion which can alone make it profitable to him to pay high wages.

But it is from the abuse of legal and constitutional rights, that the

¹ For Metcalfe see p. 84, note 1.

greatest mischiefs may be derived; if every man is to push to the utmost, privileges which are vested in him for the good of the whole, no community can remain in harmony, and a free constitution becomes a calamity, and not a blessing.

I shall have other opportunities of addressing you on the various measures which the present state of affairs may require, the purpose of this despatch is to impress most earnestly, what your own experience will have already taught you, that no change or modification of laws will lead you successfully through your present difficulties, unless you can inculcate temper, forbearance, and charity among The Queen's subjects in Jamaica; for whose happiness and lasting welfare, without distinction of class, or colour, Her Majesty feels the most lively solicitude.

I have, &c.
(signed) J. RUSSELL.

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DESPATCH FROM RUSSELL TO LIGHT¹

(P. P., 1840, xxxiv.)

Downing-street, 15 February 1840.

SIR,

I cannot be surprised at the anxiety you evince on the subject of the Ordinance for the promotion of emigration. An equal desire for the adoption of some measures upon this subject, has been shown by the merchants of London and Liverpool, connected with the West Indies, and is expressed in several memorials. I send you copies with this despatch of two of the most important.

I will not, at present, enter into the question upon which you are at issue with the planter proprietors of British Guiana; namely, whether the colony is at this moment prosperous or the reverse. The decline of produce is unquestionable. The return appended to your despatch of 15th October 1839, shows a decrease on the quarter, from 6th July to 10th October, as compared with 1831-2-3, in sugar of 7,259 hogsheads; rum, of 2,014 puncheons; molasses, 7,309 hogsheads. But in coffee, the decrease is still more remarkable, being a decline from 1,618,228 pounds to 346,350, or more than three-fourths of the whole production of the former years.

The statement of the West India merchants, in their memorial of the 17th ultimo, is as follows: 'The deficiency in the last year's crops, in Demerara alone, exclusive of Berbice, was shown to be no less than 930,000*l*.' Some part of this decline may be owing, as you

¹ Henry Light was Governor of British Guiana from 1838 to 1848, having previously been Governor of the Leeward Islands. He filled a difficult post with credit, if hardly with distinction.

assert, to the lateness of the season; but no doubt can exist as to the fact of a remarkable falling off in the quantity of produce during the first year of freedom.

I am not disposed, as a general proposition, to refer this falling off in the produce to the want of adequate wages as its cause. Many vexatious disputes have no doubt arisen; the proper rate of wages was all to seek; the engagements and obligations of slavery had left strong traces in the habits and minds both of employer and negro; the one, with little reason, expected that the negro was, at all events, to carry on the cultivation of sugar; while the other, with as little right, thought he was, in any case, to remain in undisturbed possession of his large provision ground. But a larger and more general cause had led to the decline of cultivation of sugar and coffee.

It is not to be expected, that men who can subsist in comfort without hard labour, will continue to devote themselves to it. The state of planter and slave left the West India colonies without a middle class; the more careful and intelligent of the emancipated negroes became petty traders. A few acres of ground will produce provisions for a family, with some surplus to sell at market, and bring home manufactured goods; the negroes who earn high wages, buy or hire plots of land, and refuse to let their daily labour for hire. There is nothing in this singular or culpable. No man in this country, who has capital sufficient to keep a shop, or rent a farm, will follow the plough as a day-labourer, or work from morning till night as a hand-loom weaver.

Nor, let me observe, were the damage to end here, would the British Government have any cause to feel disappointment. Carrying into effect the religious and benevolent views of the nation at large, it was their object to convert slaves into free men; to rescue their brethren of Africa from the lash of compulsory toil, and establish them as Christian men on the soil where they had been transported as chattels, or beasts of burden. On this, the principal question of all, there is, I am happy to say, no room for doubt. None of the most inveterate opponents of our recent measures of emancipation allege that the negroes have turned robbers, or plunderers, or blood-thirsty insurgents. What appears from their statement is, that they have become shopkeepers, and petty traders, and hucksters, and small freeholders; a blessed change, which Providence has enabled us to accomplish.

It is important, but still a secondary question, to consider how we can maintain the natural prosperity of our West India colonies, promote the cultivation of products for which the climate is adapted, and keep up, if not increase, the consumption of British manufactures.

I must fairly confess that, so far as these results are to be obtained by raising sugar in the quantities formerly obtained, I see much reason to apprehend we shall not be successful to the degree antici-

pated by those who urge measures now under consideration upon the Government. The fairest way, and the one most likely to lead to the truth, will be to pass in review the measures proposed.

These measures are all founded on the proposed encouragement to a large emigration of labourers into Guiana, Trinidad, and other colonies, with a view to introduce a large population, similar to that now existing in the island of Barbadoes.

The first proposition for this purpose was for the introduction of a number of Indian labourers, called Hill Coolies. The proposition, in its original shape, contemplated an engagement for five years, under contract of service.

Although Lord Glenelg greatly mitigated the measure contemplated, yet Parliament immediately took alarm at the proposal: the ignorance of the people to be removed, the abuses of crowded ships and unwholesome food, the unavoidable length of the voyage, the change of climate, the danger of compulsion upon another race, and of slavery in a new form; all these objections were urged, and urged with success against the measure. Some members of the House of Lords conceived that these evils might be obviated by regulation, and that House of Parliament sent a Bill to the House of Commons for the protection of natives of Her Majesty's territories in the East Indies, contracting for labour to be performed without the said territories, &c., by which minute restrictions were laid upon the passage of emigrants; and, among other provisions, security was taken, in the third clause of the Bill, that they should have the means of performing their own heathen rites.

But, when these restrictions came to be considered, those for whose benefit the labourers were to be conveyed, agreed with Her Majesty's Government that it would be better to stop the emigration from India altogether, until some more efficacious, and, at the same time, more simple measure could be devised; the Governor-General of India, weighing all the difficulties of the case, came to the same conclusion: nor has the committee, appointed in Bengal to investigate the subject, proposed any satisfactory plan.

I confess I should be unwilling to adopt any measure to favour the transfer of labourers from British India to Guiana, after the failure of the former experiment. Admitting that the mortality of the Hill Coolies first sent may have been accidental, I am not prepared to encounter the responsibility of a measure which may lead to a dreadful loss of life on the one hand, or, on the other, to a new system of slavery. Corporal punishment is not unknown to those poor people; and I have heard no argument used in favour of enabling the crowded population of India to take advantage of the high wages of Guiana, which remove altogether the danger I apprehend.

Another resource which has been adverted to is, that of the negroes captured by our cruizers in slave-ships; but I cannot anticipate

much benefit from such importation. If, as has lately been the case, the number of slaves taken in such vessels should be few, but little advantage would be derived from sending them to Trinidad and Demerara, instead of the Bahamas, at the risk of fresh capture. You are probably aware, that, since January 1838, not more than three captures of ships, with slaves on board, have taken place in such situations as to lead to their being brought to the West Indian Mixed Commission Court for adjudication.¹

But if this number should increase, and any large addition be made to our rich colonies from this source, our whole policy in putting down the slave trade would be exposed to suspicion, and we might not improbably be told, that we were indirectly recruiting our own possessions with compulsory labour by the very means which we employed to suppress the traffic of other nations; still I am not determined to exclude this source of supply; I wish only to point out, that it must be either scanty or suspected, and that those who look to it as a remedy for the present want of labourers will probably be disappointed.

Other or more legitimate modes of increasing the number of labourers have been suggested. A gentleman, who yields to none in experience or ability, conceives that the middle class of Trinidad will be filled by emigrants from the United States, leaving the blacks of the island to resort to field labour for subsistence. This may, to a considerable extent, be the case.

In course of time we may hope to see the black population, which was kept down by legal oppression and licentious morals, consequent on a state of slavery, advance in numbers under the institution of marriage, and in the enjoyment of property. Every increase of numbers, if accompanied by education and civilized habits, will lead to increase of industry, and be productive of wealth.

But, supposing everything to be done, which, by bounties on emigration, locating captured negroes, and natural increase of population, can be expected, it will still remain a problem, whether it would be possible to maintain sugar cultivation to its former extent, for this is what is meant by the term 'prosperity;' while, on the other hand, the term 'ruin' is used to designate, not the poverty of the people, not the want of food or raiment, not even the absence of riches or luxury, but simply the decrease of sugar cultivation.

Let me, then, look at this question largely. It is stated (I take it only for illustration), that the wages of a day labourer are, in Guiana, 1s. 6d. per day, and in Hindostan not more than 2d. When you should

¹ These Mixed Courts were the complement of the mutual right of search granted, with some limitations, by the treaties against the slave trade made by Great Britain with Spain, Portugal, and certain other countries. Any vessel seized for slave trading was to be taken to one of certain named ports, where a Court composed of citizens of both the powers in question adjudicated upon the ship, and if it were found that an offence had been committed under the treaty, freed the slaves.

have removed to Guiana a large number of labourers, they are still to be free labourers; the soil is fertile, the climate invites to indolence: the African race love ease and enjoyment, at least as much as any other; you have still no certainty for your sugar crop. In the meantime, it is a mere matter of calculation to the capitalist what sugar will cost him to raise in Hindostan, to bring to England, and to clear of duty; and whether, all this done, he can compete successfully with the Demerara planter. If he can, the sugar business will rise in Bengal, and the Coolie remain at home; the plantation will be found for the labourer, and not the labourer go to the plantation. Changes in commerce as great as this took place when woollen manufactures came from Tuscany to England, and fabrics of silk went from the East to France.

Having made these observations, I have to add, that I have no indisposition to allow the attempt to be made to recruit extensively the population of Guiana. I will state, in a separate despatch, the modifications I think necessary in an Ordinance, to replace that which Lord Normanby¹ advised Her Majesty to disallow. Freedom of labour is the general principle, and restriction should be the exception.

But in whatever degree I might be disposed to yield to the representations of the merchants and proprietors, whether in this country or in the colonies, I must enjoin upon you to bear in mind, that the happiness of the inhabitants of the colony you are appointed to govern is the chief object. Encourage religious instruction, let them partake of the blessings of Christianity, preserve order and internal peace, induce the African race to feel that wherever the British flag flies they have a friend and a protector, check all oppression, and watch over the impartial administration of the law. By such means our colonies in the West Indies will be made to flourish, though in a different form and a different sense from that in which the term has been hitherto used. The Queen, whose commands I now convey to you, looks for Her reward in the faithful attachment of a million of Her people, whom it has been Her care to render worthy of the boon which it was the happiness of Her predecessor to be enabled to grant, by the liberal assistance of His Parliament, and amid the joy of His subjects.

I have, &c.

(signed) J. RUSSELL.

¹ The first Marquis of Normanby had been Secretary of State for the Colonies from February to August 1839, when he exchanged offices with Lord John Russell, then Home Secretary. From 1831 to 1834 he was Governor of Jamaica: after that he had been Lord Lieutenant of Ireland. He was an able man of liberal opinions, but not in the first rank as a statesman.

DESPATCH FROM METCALFE TO RUSSELL

(August 2, 1841) [EXTRACT]

(C. O. 137/256: P. R. O.)

It would certainly be a more gratifying state of things if such confidence were reposed by the Legislature and the Constituency in the Executive Government as would induce them to throw every part of executive administration entirely into its hands; but it will require a long period of mutual cordiality to produce this feeling. There is at present a distrust of the Mother Country generally, which although it may be partly owing to recent struggles connected with or consequent to the abolition of Slavery, can in part be traced to causes more remote. It is highly desirable that this distrust should be removed, and a cordial feeling between the Colony and the Mother Country established. It would I conceive conduce to that end to abstain from any Contest regarding the peculiar powers which the House of Assembly has acquired in executive administration¹ while they are limited to matters which have not previously been in the hands of the Executive Government, and to arrangements which do not appear to injure the public Service.

It would tend to the same purpose if the Enactments of the Local Legislature were regarded without distrust as to their design. It cannot be expected that the Government at Home will pass Acts which are deemed to be positively unjust, but as far as objections are founded on the suspicion that the Acts are designed to be partial and oppressive, or that although precisely the same as English Acts they will be wrongfully administered, or that anything peculiar in the Negro Character or the circumstances of the Country renders Legislation bad here which is good at Home; all objections on such grounds may I confidently believe be safely discarded. Nothing it appears to me is wanting to ensure the Zealous co-operation of the Legislature of Jamaica in all good measures but the removal of the impression that they strive in vain to give satisfaction, and that all their proceedings are treated with injurious suspicion. It may be assumed as incontrovertible that no people in any known Country in the World are or ever have been, as far as we are acquainted with its History, more free, more independent, more comfortable or less liable to oppression than the Negro Inhabitants of Jamaica. For much of this besides the immeasurable Boon of Emancipation from

¹ The Assembly of Jamaica (like the Assemblies of the old American Colonies) was accustomed to find compensation for its lack of control over the Executive Government by entrusting the execution of many of its Acts to Committees of its own body. In particular, the collection and application of the revenue were in the hands of Commissioners of Public Accounts who were virtually the Assembly itself under another name.

Slavery they are unquestionably indebted to the fostering care of Her Majesty's Government; but it is fair to add that I do not believe that the present Legislature would pass any Acts of designed injustice; or that any unjust Acts could long be enforced without spontaneous amendments.

The Legislature of Jamaica, like all Legislatures, will naturally have a tendency to legislate mostly in that direction to which the Interests of the Members and their Constituents urgently point; and it might be well if all Legislation underwent the same distrustful scrutiny and revision to which that of Jamaica is subject. There can be no doubt that Enactments liable to this process are likely to be improved by it; but this benefit cannot be obtained without some attendant evil. A Legislature conceiving itself to be independent, and to possess the right of legislating for internal Government, can hardly brook continual and minute interference and correction by the distant Authority which rules over the general affairs of the Empire. The Local Legislature feels that by this practise its own peculiar province is invaded, and its respectability materially affected. The feeling is so strong that if I were to communicate to the House of Assembly that an Act would not be confirmed unless the proposed alterations were adopted, or even that your Lordship's judgment on the Act would be suspended until the result of the reference were known, the probability is that the amendments would not be proceeded with, and that the harmony of the Session and the progress of public business would be disturbed by an outcry of breach of privilege. As far also as it may be unnecessary, interference with the Local Legislation is essentially a violation of the principle of Self Government which is inherent in the existence of Local Legislatures. I should therefore say that if the good feeling and cordial co-operation of the Colony be deemed of sufficient importance it would be advisable to abstain from habitual and incessant interference, and to confine the disallowance or suspension of decision to Acts of manifest enormity or unavoidably injurious consequence, and that it would be often better to allow an Act and to instruct the Governor to endeavour to effect the requisite amendments, than either to disallow it or to suspend decision until the amendments were carried.

MINUTE OF STEPHEN (September 15, 1841)
[EXTRACT]

(C. O. 137/256: P. R. O.)

Mr. Hope.¹

Sir Cha^s. Metcalfe is, as you are well aware, a man of singular ability, who has seen much of human Society, especially in the East, and whose temper of mind is generous, confiding, and magnanimous, almost to a fault. So accomplished a man never before in my recollection administered the Government of Jamaica. Indeed he belongs to a Class of men from whom we have rarely indeed been fortunate enough to draw any for the Government of our Colonies, for he is distinguished by that breadth of general views combined with that clear practical good sense, which are two of the great component elements in the character of a Statesman. Now to such a person it is needless to say, that extraordinary deference is due, when writing on Subjects under his own immediate observation and control to a Government which must view those subjects from a great distance, and under many influences unfavourable to the impartial, calm, and comprehensive appreciation of them. Such was certainly Lord John Russell's judgment. He objected to many of the Acts of 1839, but, in deference to Sir Cha^s. Metcalfe's opinion, he waived those objections. His Lordship also strongly objected to several of the Acts of 1840, but suspended any decision upon them until he should be apprised of Sir Cha^s. Metcalfe's view of the arguments which seemed to himself of great *prima facie* weight. Perhaps Sir Cha^s. Metcalfe would have judged better if he had anticipated the Criticisms which these Laws were calculated to provoke. But, even Sir Cha^s. Metcalfe has the habit of almost all Governors—the habit I mean of Confining his attention exclusively to the scene before him, forgetful of the very peculiar position of the Government he serves—of their responsibility to Parl^t. and to public Opinion—of the interest taken in England of late years in matters of this kind, and of the coarse and vulgar agency, exaggeration and popular arts, by which public Opinion on such subjects is guided and misled. He threw on the Gov^t. the responsibility of accepting these Laws without suggesting the apologies by which the acceptance of them was to be defended.

That defence I should not hesitate to declare insufficient if attention were to be confined to the abstract question of the merit or demerit of each of these Acts. But the general defence is a different and a far more weighty consideration.

There can be no doubt that since the Commencement of the anti-Slavery controversy—that is during the last 23 years (for so long in

¹ Mr. G. W. Hope was Lord Stanley's Parliamentary Under-Secretary for the Colonies.

one form or other it lasted) the practice of this Office has been to regard Jamaica Legislation with jealousy and distrust on every subject connected, however remotely, with the Condition of the manual labourers, whether as Slaves, as Apprentices, or as Freeman. Such jealousies may have been carried too far, but that they were justified and required by the former state of Society in Jamaica to a very great extent, appears to me as incontrovertable a truth as any proposition of the kind can be. In old times—that is, nearly 30 years ago—when I had first to do with these subjects, the Governor of Jamaica (you must allow me to drop all reserve) was the most indolent of mankind.¹ For nearly 20 years he held his Office. I do not believe that during all that time he wrote for himself a single Despatch, or did for himself a single act as Governor, beyond acts of mere ceremony. A Colonist, Mr. Bullock, was the real Governor, and of course Lord Bathurst was never warned to distrust the motives or Conduct of the Assembly. Few such warnings came from Sir John Keene or Lord Belmont. But their Successors wrote little else. Lord Normanby, the Marquis of Sligo, and Sir Lionel Smith especially, regarded the Assembly in the worst possible light. Each began with Courtesies and conciliation. Each ended by denouncing the Assembly as a Body of men who were equally unworthy of Confidence in their individual and in their collective character. I believe that it would be impossible to match the dark and offensive features of the delineations thus drawn by successive Governors of the representative Body over which they presided. Sir Charles Metcalfe reverses all this. He makes himself Sponsor to the utmost extent for the integrity, the intelligence and the public Spirit of the Assembly. His Despatches claim for them almost unlimited confidence, and describe them in terms such as they would themselves select for their own eulogium. Discord has entirely ceased, and the scene is one of unbroken mutual Confidence. He deprecates any disturbance of this tranquility—any resumption of the Ancient habits of distrust—and any return to the practise of examining their Laws in that spirit.

I have no doubt that this seeming Contradiction between the past and the present local Authorities admits to a great extent of reconciliation. Sir Cha^s. Metcalfe's Predecessors governed during the Controversy, and were themselves excited by it. He governs after Freedom has been entirely established, and has no such cause of irritation. They had an unpopular Duty to perform and the two latest of them at least were men of quick and warm as well as generous feelings, and spoke out their disgusts without affecting to conceal them. Sir Cha^s. Metcalfe on the other hand, is obviously a man of the utmost self-possession and Composure. He exhibits a munifi-

¹ This refers to William, fifth Duke of Manchester, who was Governor of Jamaica from 1808 to 1827. He was later Postmaster-General in the Duke of Wellington's Ministry. Mr. Bullock (mentioned below) was Governor's Secretary.

cence which very few men could afford, and which fewer still would practise. He obviously hates controversy and makes every possible sacrifice to avoid it. He as obviously loves popularity and perhaps is not unwilling to make some sacrifice to obtain it. Without practising any unworthy Arts, he has had the skill and good fortune to bring the Assembly into the most perfect good humour with himself, and with each other. Every thing proceeds harmoniously but it is because he yields to every thing. He maintains that this is the right course and there is at least much plausibility in that Opinion.

Popular Franchises in the hands of the Masters of a great Body of Slaves were the worst instruments of tyranny which were ever yet forged for the oppression of mankind. What the Southern States of America are Jamaica was. If no Assembly had ever been established in the Island I doubt whether any wise man would create such an institution even now, when Slavery is extinct. For still there survive indelible natural distinctions and recollections which divide Society into Castes, and which must make the legislation of the European more or less unjust and oppressive towards the African Race. Whatever Sir Cha^s. Metcalfe may say to the contrary, I am convinced that this is inevitable. Many of the Laws which he himself has passed give proof of it. The sure workings of our Common nature are alone enough to establish it. But after all the same thing is true more or less of all human legislation. Laws are everywhere made by the rich, and for the rich. The English Statute Book from one end to the other shows the influence of self-love and self-interest on the Law-givers. It is not reasonable therefore to regard the Assembly of Jamaica as utterly unworthy of Confidence because similar influences affect them, and perhaps with still greater power.

We must take the case as it is. Here is a Legislature which cannot be got rid of—which must exercise a most extensive authority for evil or for good—which may be kept in continued check by the superintending power rejecting its Laws or which may be soothed flattered and conciliated by an unhesitating acceptance of its Enactments. They cannot be destroyed or much enfeebled. But they may be coerced or coaxed. Sir Cha^s. Metcalfe's recommendation is in favor of pursuing the latter course.

If one could count on always having Governors like Sir Cha^s. Metcalfe—that is, Masters of the Arts of conciliation and disposed to use them,—and if one could further count on a Government in England strong enough to resist and silence the clamour which such a Course of policy would provoke here, my belief is that Sir Cha^s. Metcalfe's plan would be the right one. Now that the great abuse is extinguished I believe we should do more good to the objects of our solicitude by propitiating the good will of the Assembly, even at the expense of acquiescing in many bad measures, than we could do by the most inflexible exercise of the right of rejecting all such measures

at the expense of one protracted quarrel with that House. And, as human wisdom is at best but short sighted, and as to live *ex tempore* is very much the Condition to which in affairs of this kind the most profound are reduced, it seems to me that while we actually have Sir Charles Metcalfe governing in Jamaica, and an Administration of unwonted strength governing in England, the best possible course is to take his advice and to try to accomplish by blandishments and Courtesies the improvements which are hardly to be attained by other methods. But any Gov^t. which embarks in this system must lay their account with being misrepresented and violently assailed by their Opponents.

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RESOLUTIONS OF HOUSE OF COMMONS COMMITTEE ON THE WEST INDIA COLONIES¹

(*P. P.*, 1842, xiii.)

Resolved, THAT it is the opinion of this Committee,

1. THAT the great act of emancipating the Slaves in the West Indian Colonies has been productive, as regards the character and condition of the Negro Population, of the most favourable and gratifying results.

2. THAT the improvement in the character of the Negro in every Colony into the state of which this Committee has had time to extend inquiry, is proved by abundant testimony of an increased and increasing desire for religious and general instruction; a growing disposition to take upon themselves the obligations of marriage, and to fulfil the duties of domestic life; improved morals; rapid advance in civilization, and increased sense of the value of property and independent station.

3. THAT, unhappily, there has occurred, simultaneously with this amendment in the condition of the Negroes, a very great diminution in the staple productions of the West Indies, to such an extent as to have caused serious, and, in some cases, ruinous injury to the proprietors of estates in those Colonies.

4. THAT while this distress has been felt to a much less extent in some of the smaller and more populous Islands, it has been so great in the larger Colonies of Jamaica, British Guiana, and Trinidad, as to have caused many estates, hitherto prosperous and productive, to be cultivated for the last two or three years at considerable loss, and others to be abandoned.

5. THAT the principal causes of this diminished production and consequent distress are, the great difficulty which has been experi-

¹ These resolutions were to some extent a compromise between majority and minority proposals, and resolution 9, which was inserted on the motion of Lord Howick, was part of the minority report proposed by him. The Chairman of the Committee was J. S. Pakington, the future Secretary of State.

enced by the Planters in obtaining steady and continuous labour, and the high rate of remuneration which they give for the broken and indifferent work which they are able to procure.

6. THAT the diminished supply of labour is caused partly by the fact that some of the former Slaves have betaken themselves to other occupations more profitable than field labour; but the more general cause is, that the labourers are enabled to live in comfort and to acquire wealth without, for the most part, labouring on the estates of the planters for more than three or four days in a week, and from five to seven hours in a day; so that they have no sufficient stimulus to perform an adequate amount of work.

7. THAT this state of things arises partly from the high wages which the insufficiency of the supply of labour, and their competition with each other, naturally compel the Planters to pay; but is principally to be attributed to the easy terms upon which the use of land has been obtainable by Negroes.

8. THAT many of the former Slaves have been enabled to purchase land, and the labourers generally are allowed to occupy provision grounds subject to no rent, or to a very low one: and in these fertile countries, the land they thus hold as owners or occupiers not only yields them an ample supply of food, but in many cases a considerable overplus in money, altogether independent of, and in addition to, the high money wages which they receive.

9. THAT the cheapness of land has thus been the main cause of the difficulties which have been experienced; and that this cheapness is the natural result of the excess of fertile land beyond the wants of the existing population.

10. THAT in considering the anxious question of what practical remedies are best calculated to check the increasing depreciation of West Indian property, it therefore appears that much might be effected by judicious arrangements on the part of the Planters themselves, for their own general advantage, and by moderate and prudent changes in the system which they have hitherto adopted.

11. THAT one obvious and most desirable mode of endeavouring to compensate for this diminished supply of labour, is to promote the immigration of a fresh labouring population, to such an extent as to create competition for employment.

12. THAT for the better attainment of that object, as well as to secure the full rights and comforts of the immigrants as freemen, it is desirable that such immigration should be conducted under the authority, inspection, and control of responsible public officers.

13. THAT it is also a serious question, whether it is not required by a due regard for the just rights and interests of the West Indian Proprietors, and the ultimate welfare of the Negroes themselves, more especially in consideration of the large addition to the labouring population which it is hoped may soon be effected by immigration,

that the laws which regulate the relations between employers and labourers in the different Colonies, should undergo early and careful revision by their respective Legislatures.

25 July 1842.

16

LETTER FROM STANLEY TO PEEL [EXTRACT]¹

(*Peel Papers: British Museum.*)

Private.

Downing Street
Novr. 27, 1843.

MY DEAR PEEL,

The publication, last Session, of the return to India of the Coolies from Demerara,² with considerable sums of money in their possession, and the very favourable accounts which have lately been received of the extensive Immigration from India into Mauritius, under the new regulations,³ with very few casualties, and no complaints, have naturally brought upon me still more urgent and pressing entreaties from the West Indians for a relaxation of the prohibition in their favour: and this is the more urgent, because, as I always foresaw and told them, the supply from Sierra Leone proves very insufficient. And in truth I find it very difficult to find grounds for resisting a remission of a prohibition to the Inhabitants to the worst paid portion of our fellow Subjects to transport themselves voluntarily and free of engagements, at the expense of Colonies ready to receive them, to places where their labour is in great demand, and will be well remunerated. The difficulty will be much increased if we take any step for reducing the amount of protection now enjoyed by the West Indians, without at the same time increasing their facilities for obtaining labour. Still I am aware that great caution is necessary not to raise a popular cry in this country. . . .

Yrs. Ever

STANLEY.

¹ This letter initiated a correspondence with India and with the colonies which led in the following year to the launching of a definite scheme; and in 1845 coolies from India actually began to arrive in British Guiana, Trinidad, and Jamaica, which raised loans to meet the cost.

² A few hundred were introduced in 1837-9 (see above, p. 413), and were now returning to India.

³ Immigration from India to Mauritius was stopped by order of the Indian Government in 1839, after some 18,000 coolies had been introduced, in consequence of the abuses discovered by the Committee referred to on p. 413. The prohibition was revoked in 1842 and a new scheme tried: under it no fewer than 31,000 immigrants arrived in Mauritius in 1843. Again reforms were found to be necessary, but this time there was no question of a complete stoppage. The result of this Indian immigration has been that the population of Mauritius is now predominantly Indian.

DESPATCH FROM ELGIN TO STANLEY

(August 5, 1845) [EXTRACTS]

(C. O. 137/284: P. R. O.)

It is indeed true that the time has passed when the eyes of the British Public were turned towards these Islands, and their sympathies stirred by questions affecting the welfare of the Colonists—but it may be doubtful whether the events of that exciting period tended to issues more important and interesting than those which are now in progress. The Act of emancipation was the commencement of a great work of wisdom and philanthropy, not its consummation. Other communities composed of mixed African and European races, have, like the British Colonies in this quarter, achieved freedom. But it is a melancholy fact that they are more frequently referred to as a warning by its adversaries, than quoted as examples by its friends.¹ It remains for Great Britain to raise the emancipated slave morally and intellectually as well as socially—to obliterate animosities which distinctions of blood, color and condition have contributed to imprint in characters well nigh indelible—and to prove that the material prosperity of communities thus constituted is attainable by other means than the systematic violation of the highest moral obligations.

The want of some bond of principle and sympathy to draw together the friends of the Negro and the Planter, and a distrust of each other's aims and motives arising from this cause, constituted in my judgment when I came here the chief obstacle to the realization of these views. It was not indeed wonderful that the negro in whose mind field labor on estates was associated only with recollections of the degradation of slavery, and who had been accustomed to look to his provision ground as the spot in which he had cherished whatever remained to him of the sense of property or independence, should, when he became free, have shewn a disposition to labor on his account rather than for another. Nor was it to be expected that the planter would anticipate any thing but evil from the working of a system opposed to all his experience and prepossessions. It was natural therefore that the belief should but too generally obtain that there was a practical antagonism between the moral and intellectual claims of one class and the material interests of the other. Nevertheless a conviction of this nature could not fail to operate powerfully as a bar to social progress. It estranged from one another many honest

¹ Lord Elgin is doubtless referring particularly to the disorders in San Domingo; but, although the liberal legislation of the revolution in France, culminating in the abolition of slavery by decree in 1794, was resisted by the planters, the worst troubles arose out of the attempt of Napoleon, after the eight years' supremacy of Toussaint L'Ouverture, to reduce the negroes once more to slavery.

and upright men. It gave a false and party coloring to questions of practical and economical importance such as Immigration, which it was most desirable to approach in a candid and dispassionate spirit. The discovery of some common ground on which intelligent and conscientious men representing these apparently conflicting interests might meet to concert measures for the common good, appeared to be in the state of things an object of primary importance. On this basis only did it seem to be possible to found a scheme of policy sufficiently comprehensive to conciliate general support, and sufficiently progressive to contribute towards the development of that new order of social relations into which the materials supplied by Emancipation were about to arrange themselves.

To this object as involving practical issues of vast importance, my attention has been unceasingly directed since the Government of the Colony devolved upon me. Every day's observation and experience has strengthened in my mind the belief that the interests of both classes, rightly understood, lie in the same direction. Whatever may be the case with smaller Islands differently circumstanced, it has always appeared to me that in this Colony where there is so great an abundance of cheap and uncultivated land, no measures for producing an immediate increase of population that are practicable and consistent with the first principles of liberty, could occasion such a pressure on the means of subsistence as to reduce wages to the lowest point, and render the peasantry absolutely dependant upon them, so long as they are content to live as slaves have lived before them. The best security for their looking to something beyond what their provision grounds furnish is to be found in the encouragement among them of those tastes and habits which civilization creates, leading as such tastes and habits inevitably do to the existence of wants which cannot be gratified without exertion and money. But if these views be sound, it follows that the improvement of the negro is the first interest of the Planter. Other measures may be useful to him, but only when pursued in due subordination to this end.

In order to give a practical shape and currency to these opinions, it was necessary to wean the planter from the exclusive reliance, which he had heretofore placed on the methods of slavery and the foreign aid of Immigration, and to turn his attention to resources within his reach, more especially to such as called for the exercise of a higher degree of skill and intelligence on the part of the laborer. The measures which the planter might be induced to adopt under the influence of these more enlightened views of his own interest, would at the same time, it was hoped, tend to redeem the pursuits of the husbandman from the discredit into which they had fallen as the avocation of slaves, and thus enlist the hearty co-operation of those who considered themselves emphatically the negro's friends, in the cause of the material prosperity of the Colony. . . .

The endeavors made to evoke a spirit of improvement among the Planters themselves have not been without effect. Plans of economy and amendment emanating not from suspected quarters, but from persons actually engaged in the management of estates, and conversant with the merits and defects of the existing practice, have been eagerly adopted and disseminated by the Press. Societies have been formed for the advancement of scientific and practical agriculture, from which every extraneous topic, not excepting Immigration, is excluded. As sounder and healthier convictions with respect to the prospects of the Colony, and the capabilities of a free system of cultivation have gained the ascendant, a clearer light has been shed on the connexion subsisting between the improvement of the Peasant and the interest of the owner of the soil: and the value of property has been affected, estates finding purchasers which shortly before were unsaleable. These and similar indications of material and moral progress can be estimated at their full value only by those who have the means of observing what is passing, or of communicating extensively with persons on the spot.

The facts I have mentioned were the more significant, and distinctly traceable to an action on the public mind, because there was nothing to account for them in the external circumstances of the Colony at the time. Until the close of 1844 the seasons were unpropitious—the crops annually diminishing—and the fiscal measures of the Home Government, as affecting the produce of the Island, regarded with apprehension by the Colonists.¹ . . .

Recent proceedings in the Legislature would seem to indicate that a modification had taken place in the views of the Colonists in reference to Immigration; nor is it difficult to ascribe this apparent change of sentiment to the true cause. Since the attention of persons interested in estates has been drawn to the vast importance of science and skill in the conduct of agricultural operations, and to the lavish waste of labor which characterized the slave system of cultivation, less faith has been placed in Immigration as the panacea for all ills affecting the Colony. This topic however involves so materially the welfare of all classes, and it bears so closely on the subject of my present communication that I do not think it proper to dismiss it without more detailed notice.

To Immigration carried on in connexion with the adoption of improved agricultural processes—with a due consideration to the finances of the Colony—and to the moral interests of the existing Peasantry, I have been at all times favorable. Looking at the vast amount of fixed capital already vested in the soil of the Island—the deficiency of slaves which existed on many Estates before emancipation—the extensive withdrawal from field labor which took place after

¹ A reference to the Sugar Duties Act of 1844 and its admission of free-grown foreign sugar to the British market. See above, Section IV, No. 8.

that event, and the degree to which the Peasantry, in good seasons more especially, are independent of wages— I have never seen reason to doubt that a large addition to the population might be made consistently with the above named objects:—nor is it easy to define the extent to which this increase might be safely carried, if accompanied by a corresponding influx of capital.

But there is a wide difference between these views and those which prevailed on this subject in many quarters when I came to the Colony. I have always considered a reliance on Immigration exclusively, as the only practical and available remedy for the material difficulties of the Colony, to be a serious evil, and averse to its best interests. At the time to which I refer it had already led to a reckless expenditure of the Public Funds. It was based on the hypothesis, expressed or understood, that the system of husbandry pursued during slavery was alone suited to tropical cultivation. Its tendency therefore was to discourage agricultural improvement, and to retard the growth of that more intimate sympathy between the enlightened friends of the Planter and the Peasant which I was so desirous to promote.

On the whole then I think it may safely be concluded that the prospects of the Colony are favourable, and that it is steadily advancing towards that condition of prosperity and social happiness in which the reasonable expectations of the friends of emancipation will be fulfilled. Nevertheless, in some particulars, its progress has unquestionably been less rapid than might have been desired. Notwithstanding the attention bestowed on agriculture, our crops fall far short of those produced during slavery. In spite of improved Prison Discipline, crime has not diminished: the utmost that can be said on this point being, that its increase appears to have received a check—and the teachers of every denomination affirm that there is a falling off in the attendance at schools.

This circumstance, lamentable though it be, admits of explanation. During the apprenticeship, and immediately after the establishment of freedom, undefined expectations of the advantage which book learning would confer were excited in the breasts of Parents and Children.—It was looked to as the means of achieving political privileges and advancement in life.

As things have settled down these impressions have worn off. Social rights and the enjoyment of freedom and independence have fallen to the lot of the instructed and ignorant alike. Parents uneducated themselves, can hardly be expected to set a higher value on education for its own sake—and regular attendance at school is irksome to children here as elsewhere. . . .

The object sought in the establishment of a Board of education has been to mitigate this evil, both by providing funds in aid of well conducted schools, and supplying if possible a stimulus to revive the declining interest in the subject. . . .

Education seems at one time to have been prized as the means of enabling the child of the laborer to emancipate himself from the pursuits in which his parent had been engaged. The excitement which this hope supplied has in a great degree ceased to operate. A more healthy impulse may perhaps be given in the same direction by the introduction of a course of instruction which promises both to connect the vocation of the husbandman with subjects of intellectual interest, and to render his labor more valuable to himself and his employer. The Act contemplates the formation of a Normal School of Industry, but the fund provided is totally inadequate to this object. Moreover, there are in this community special difficulties to encounter in the general introduction of an industrial system into schools. The climate is unfavorable to work out of doors. Some of the friends of the labouring class still look on field labor with a jealous eye as associated with the recollections of slavery. I may mention as a proof of the truth of this allegation, that the Baptist Herald represents the endeavors of the Board of Education to introduce this system as an attempt to prevent the laborer from ever rising above the station in which he was born. It seems desirable therefore, before venturing too far, to create if possible a feeling favorable to the subject by presenting it to the Public in its most attractive guise as connected with questions of scientific and practical interest. . . .

The Royal Agricultural Society have joined me cordially in manifesting a desire to promote the end in view, thus affording distinct evidence of the fact, that the most intelligent planters of the Colony, acting on behalf of the interests of agriculture, recognize in the education and growing intelligence of the laboring class, an object of their special care.

I have, &c.

(signed) ELGIN AND KINCARDINE.

18

DESPATCH FROM HARRIS TO GREY¹

(*P. P.*, 1847-8, xlv.)

Trinidad, 19 June 1848.

MY LORD,

I have the honour to forward to you copies of three resolutions which were passed by the Legislative Council of this colony at its last meeting.

¹ George Francis Robert, third Lord Harris, governed Trinidad with great ability from 1846 to 1854. He was afterwards Governor of Madras during the anxious years of the Mutiny. He married a daughter of the Archdeacon of Trinidad, and was sometimes accused of undue partiality towards the planters: what really distinguished him, however, was his independence of mind and his willingness to risk unpopularity in England for the sake of what he believed to be just.

The second and third resolutions refer to subjects which have already been brought under your Lordship's notice, and I hope in a short time to have laws framed which will meet the difficulties mentioned, so far as they can be met in this country.

In considering the subject of the first resolution and the questions which it involves, the present state of this island as regards the chief article of its production must be fully comprehended.

The affairs of the colony have now arrived at that state, that it is absolutely necessary that their position should be thoroughly investigated, and then placed on such a footing as that, at all events, the lavish expenditure and haphazard legislation which have been going on for the last ten years should not occur again.

I find that in 1838, when freedom was fully granted, there were 206 estates in cultivation, at the end of last year there were 193, so that only 13 had been abandoned up to that period. From the increase in the quantity of land planted on some estates, the number of acres was probably the same at both periods.

Previously to the emancipation the slaves on the estates amounted to about—

Prædial labourers	.	.	.	.	.	.	12,000
Artisans	.	.	.	.	.	.	4,000
Total							16,000

At present, by the return inserted in my annual despatch, it is shown that there are at present about 10,000 at the command of the estates.

The crop has however increased; notwithstanding this it can be shown, without much difficulty, that since 1838 not only has there been no net profit, taking the whole term of years and all the estates together, but that, on the contrary, there has been a dead loss of British capital to the amount of at least 1,000,000*l.* sterling.

Out of the 193 estates, about 17 may be considered as having given a profit; about the same number may have held their ground, neither gaining or losing; the rest have been kept up at the loss above-mentioned.

It is also necessary to take into the view some of the peculiarities of these 17 profitable estates.

On examination it is found that most of them belong to resident proprietors, who have sold their sugar in the island, who have adopted few, if any, improvements, and thus saved any outlay of capital, and who have exercised the strictest economy.

It may be asked, how is it that sale in the island has proved more lucrative than shipping home; is it that a foreign market offers higher prices? Not at all. There are scarcely any demands here for foreign markets. The American and Canadian traders prefer going for better

and cheaper sugar to Santa Cruz or Porto Rico, and all shipments which have been made hence to the American continent have proved bad speculations.

The advantage of selling in the island has been occasioned solely by speculation, and that almost entirely of one mercantile house, which kept up the prices in the island for some years, to the detriment of the merchant at home; it failed last year for 190,000*l*.

Thus there has in reality been no net profit; the estates have been kept up by a drain on British capital, and the public income has been chiefly defrayed from the same source.

Two serious evils have resulted from the facility with which money has been procured. The cultivation has been spread over a larger surface than was judicious, even on estates belonging to capitalists, and, together with the comparative ease of procuring the labour of immigrants, many persons without capital have been enabled to undertake sugar-making whose circumstances in no way authorized such an enterprise.

Thus far up to the end of 1847.

It does not appear probable that more than six estates are likely to make a profit this year.

Before coming to any conclusion with respect to immigration, it will be necessary to decide whether the island, under its present circumstances, can make sugar at a profit; if not, whether immigration can so change the state of things as to turn the balance in its favour. In considering this question, it is most important to remember that the pressure now exists to its fullest extent; the remedy to be of avail must be immediate.

I shall first take up the subject in an economical light, as affecting the productions, and hence the wealth and commerce of the colony, and,

Secondly, in an equally or more important point, in its moral, political and social bearing.

To arrive at any conclusion on the first point, it is necessary to know at what cost sugar must be made in order to meet the market price, and this is a question in the outset which is difficult to settle, as the experience of one year under the Bill of 1846 cannot be considered an average, but at all events, with a diminishing duty it is not very likely that the price will increase for any given term of years.

In my annual report four dollars is stated as the average cost of sugar per cwt. Further inquiries lead me to suppose that statement to be correct, and as a proof of this I forward to your Lordship the detailed account of the cost of 24½ hhds. of sugar produced on eight acres of land; these were produced in order to compete for a prize offered by me for the largest quantity of sugar produced at the smallest expense, so that it is certain that pains have been taken to reduce the expenses as much as possible; the actual cost of cultivation

and manufacture is low, but the share in the expenses of the estate raise it very nearly to four dollars.

Now, no profit is calculated, and nothing supposed to be laid by for accidents. This very piece of land is a proof of the casualties attending cane cultivation. The crop was burnt off it in 1846, so that there ought to be a rent for three years to make a remuneration to the proprietor, who is probably in the same state as most others, and cannot wait for a long period to recover his loss. This cost, certainly will not meet the market and remunerate the proprietor. We can arrive at, then, no very favourable conclusion in this respect.

Would then immigration prove a remedy? This must depend very much, first, on the extent and quantity of the supply; secondly, the cost at which it is brought, and thirdly, the terms on which the immigrants will be allowed to be engaged.

As to the first, I see no hopes of its being accomplished so copiously and rapidly as to have any beneficial effect on the circumstances of the present proprietors. It is clear that at the present rate of wages, viz. 10*d.* per day, neither the people of Sierra Leone or from the Kroo Coast can be expected to come.¹ Their sole object is to make money in a few years, and then to return to Africa. Now, strangers cannot live in this island for much less than 10*d.* per day, so that the captured Africans can alone be counted on; but their arrival must be casual, and can hardly be classed as a regular system.

As to the second, I imagine that it will not amount to much less than 10*l.* per head for Africans.

As to the third, it appears to me very questionable whether the planter will be enabled to make such arrangements as will repay him.

But would it be advisable to encourage the continued cultivation of estates when there is no capital to carry them on, even if immigration would produce some alleviation? I can hardly think so. I speak of a regular system paid for by the general funds of the island. Up to the present time, wasteful and ill-regulated immigration has greatly assisted in promoting reckless speculation. But if the island funds could bear the expense, which they cannot, is it necessary? It is calculated that at the furthest the cultivation will be continued on about 70 estates; the others will not be exactly abandoned, but no outlay of any kind will be made. There will therefore, up to the commencement of next crop, be a sufficient supply of labour for the demand; I hope it may prove no more than sufficient.

It appears to me more than doubtful whether such beneficial result would be derived from immigration as to save the present proprietary body.

¹ The Kroos or Krus are one of the finest, both morally and physically, of the West African races. As boatmen they are particularly skilful. There were and are a number of Krumen resident near Freetown (Sierra Leone), but the 'Kroo coast' is the southern coast of what is now Liberia.

In taking a general view of the whole subject, it will be seen that under a system of slavery, an extent of cultivation had been arrived at, a proprietary body had been formed, a mercantile interest had been created, which could never be attained or supported with a free population of the same numerical force.

Since emancipation this state of things has been supported with great and increasing difficulty, not by its own intrinsic vigour but by the influx of British capital, which has paid for the expenses of machinery, improvements, labour and immigration. This supply may be now said to have ceased. The question is, shall further attempts be made to afford artificial support, or shall the affairs of the colony be allowed to take their natural course?

It is hard for men to give up what they considered their own; it is hard apparently to recommend that they should be as it were deserted by their native land, there can be no doubt of it; this ought to have been thought of before, and provided against; but it does not alter the question for those who have to deal with it at present.

Matters are now as nearly as possible at their worst; artificial assistance will do little or nothing. Those who have energy, enterprise and capital may still continue to cultivate the soil; by improvements, by advances in scientific cultivation and by economy I believe they may still succeed. The number of acres in cultivation will be less; the crop will diminish in quantity, but it will not be the less lucrative, I believe more so, and a natural state of things be produced which will place matters upon a more wholesome footing, and at all events a fair trial will be given to show if the energies of the population are sufficient to cause a general advance in its position.

Should the Imperial Government be disposed to assist so as to forward the liberated Africans wholly or partly free of expense, it would doubtless be a great assistance to those proprietors who may continue to cultivate their estates, but I think that such immigrants should be distributed only to such persons as will guarantee their safe keeping for a certain term, under such conditions as shall be fixed on by the Government; and this brings me to the second part of my subject.

One of the many errors which have been committed since the granting of emancipation is the little attention paid to any legislation having for its end the formation of a society on true, sound and lasting principles. That such an object could be attained at once was and is not to be expected, but undoubtedly had proper measures been adopted, much greater progress might have been made.

As the question at present stands, a race has been freed, but a society has not been formed. Liberty has been given to a heterogeneous mass of individuals who can only comprehend license—a partition in the rights and privileges and duties of civilized society has been granted to them; they are only capable of enjoying its vices.

To alter such a state of things, vigorous and prompt measures are

required, in order that the authority of the law should be felt; greater weight must be given to the Executive; to humanize the people a general and extensive system of education must be adopted; to assist in civilization every encouragement should be given to the establishment and to the easy circumstances of a superior class, especially of Europeans, amongst the population. All this requires expense. But what means are ready at hand to effect this? The energy of the lower authorities has been shaken by the partiality which has been invariably shown until lately in the transgression of the law if by a coloured or a black man.

Education has been neglected; there are therefore no young people growing up capable of giving instruction.

The Europeans and upper classes have been ruined by a succession of blows, which followed so rapidly one on the other, that no foresight could have provided against them under the circumstances in which they were placed. Bankrupt in pocket and crushed in spirit, they are no longer capable of taking the leading part required of them.

Now, the arrival of large bodies of immigrants does not tend to improve this state of things.

If it be considered that the chief aim and object of society is to create the largest quantity of produce at the lowest possible price, I have shown that it is very doubtful whether on that score immigration will succeed; but taking a higher point of view, and looking to the moral results, a population such as I have described is not improved by an influx of such people as immigrants generally are; the habits which they introduce are commonly pernicious, and morally and socially they tend to deteriorate, if left at liberty; hence the necessity for strict regulations.

In a political point of view the question must mainly depend upon the value at which Great Britain estimates this colony, and the sacrifice she is willing to make for its preservation. There is a vitality in the lingering powers of tropical life, which in some degree compensates for the general want of energy. By partial assistance in immigration, affairs may be carried on until that event shall take place which alone can break the spell under which the West Indies are suffering, I mean the utter destruction of slavery; then I feel convinced, if its population be but industrious, that Trinidad need fear no competition with any country in the world.

I have, &c.

(signed) HARRIS.

LEADING ARTICLE OF *THE TIMES*(January 6, 1848)¹

In the number of the *Quarterly Review* which has just appeared will be found an article which within the compass of a few brief pages contains a most convincing summary of the errors into which the 'Friends of the African' have successively fallen. Looking at the matter simply and solely with a view to the interests of the negro, it is now beyond a doubt ascertained that his condition has been incalculably damaged by the very measures which were adopted with the exclusive purpose of improving it. The gross amount of the slave-traffic itself is so far from being diminished, that, according to Sir Fowell Buxton's own report, it had in 1840 been actually doubled. The horrors of this traffic had so far augmented that, according to the same authority, the average mortality in the middle passage had risen from 9 to 25 per cent.—in other words, for nine negroes who died under the old system, fifty died under that which had been devised, at an enormous cost, for their special protection. The model colony on the coast has resulted in a hideous hotbed of iniquity and pestilence, where even the brutish cannibal of the interior finds a lower depth of degradation. The model settlements on the banks of the Niger, from which civilization was to radiate in every direction throughout the benighted continent, terminated, as is well known, in the miserable death of the adventurers, before a hut could be thatched or a spade put into the ground. No person can now rise in Exeter-hall² and deny that in every single department of the system it has been a total failure. We do not say this in any triumph or with any spite. We simply wish to establish the proposition that our scheme must be totally changed if only for the sake of the negro himself.

But there is another class of men involved in the question, who are not without sympathizers in their misfortunes. The West Indian proprietors have been brought by the operation of some or all of these measures to a state of the deepest depression, and few are now found to deny that, as regards them also, some alteration in our scheme is imperatively called for. On both points, then, we are compelled to begin anew, and we should be making a very ill use of our previous experience if we did not, on this occasion, more saga-

¹ *The Times*, now under the editorship of Delane and at the height of its power, was pre-eminently the organ of the wealthy middle classes. The support it gave to the claims of the West Indians was all the more valuable from the fact that it was an adherent of the new commercial policy.

² Exeter Hall, in the Strand, where many of the great missionary meetings were held, was often used as a generic term for the group of men who led and inspired the anti-slavery and negrophilist movement.

ciously devise our plans, and more reasonably calculate their results. We do not mean to assume that the care for the negro is confined to any sect of philanthropists; on the contrary, we take it for granted that the entire nation is interested in the condition of that class of its fellow-creatures for which it has made such sacrifices; just as we presume, on the other hand, that the white victims of our past legislation may command a sympathy equally universal. It fortunately happens that the interests of these two classes are almost identical. We cannot protect the negro without protecting the West India planter. Whatever discourages the slave labour of Cuba will benefit the free labour of Jamaica. Whatever exempts the slave from the miseries of slavery will relieve the free labourer from the only competition he fears. If Exeter-hall could really and actually gain its proposed ends, it would effect all that the West Indian Houses of Assembly could ever desire.

We have, then, two objects before us which are generally and reasonably sought by the community at large. We wish for a commodity at its natural price, and we wish to extinguish a certain method of producing this commodity. It is clear that these two objects must, to some extent, interfere with each other. In the pursuit of the former we are desirous to save; in that of the latter we do not refuse to spend. There is no analogy between the case of sugar and that of any other production. In all other cases we look simply to the cheapest market by the simplest of all economical rules. No element is introduced to disturb the conclusions of commercial science. We have no kind of wish to discourage the growth of Polish corn or American cotton. We take our cotton and our corn on the best terms that are offered; and do not consider that in so doing we are fostering any infamous system, or acting inconsistently with any professed conviction. But here, for the satisfaction of our own consciences, we step out of the circle of economical calculations. We indulge ourselves in an exception, and are willing to pay for it. The only question is whether we lay out this money judiciously. Hitherto we have devoted it to the chance of crippling our rival's market; perhaps we may now apply it to the assistance of our own.

The West Indian interests are our interests. Even if cheap sugar were the highest aspiration of every British heart, we should be obliged to change the course we at present hold. In the first place, if sugar is to be made by none but slaves, it would be obviously inconsistent to impede the commerce in these slaves. But, in the next place, it is clearly destructive to the cheapness of any commodity to demolish every market for it but one. For the sake of cheap sugar only it is necessary to set our own planters on their legs again. It is not unnatural that their own suggestions for this purpose should recommend the ancient expedient of 'protection'; but, though we cannot deny that it might be granted in such a case as this without

any dereliction of the true principles of free trade, yet for many and obvious reasons it is not an advisable resource. There is no doubt that every sixpence we at present expend or waste in our endeavours to suppress the slave-trade¹ is virtually spent in the protection, however futile, of free-grown sugar. Unless, therefore, we permit slave-traffic to take its course, which we never shall do, we must be indirectly paying for the protection of free labour in this commodity. The question is how to make our expenditure most effective to its proper end, and most conducive to the general welfare.

At this moment we devote annually to this branch of the public gratification some hundreds of thousands of pounds, and as opinions are now all gradually coinciding respecting the present application of the fund, we shall doubtless soon see it disengaged for some more productive investment; nor do we much doubt that a nation which has patiently squandered so much in a vain attempt to blockade a slave-mart would willingly increase the outlay if it would not only secure the original object but restore its sinking colonies by one and the same measure. The West Indian islands are sure of protection at our hands so long as their rivals resort to such infamous methods of competition. That we give it less for their sake than our own satisfaction may be true, but we need hardly carry this principle so far as to exclude them deliberately from the benefits of a sacrifice we are determined to make. With the same object still before us, suppressing slavery, we may cripple our opponents and yet assist our friends, we may still spend our money and yet get something for it; and surely the latter consideration need not be so offensive as to confine us any longer to a system under which we pay all the price without getting any of the profit.

20

EIGHTH REPORT OF HOUSE OF COMMONS
COMMITTEE ON SUGAR AND COFFEE PLANTATIONS
(EXTRACT)²

(*P. P.*, 1847-8, xxiii, Part III.)

Resolved, That it is the opinion of this Committee,—

1. That great distress undoubtedly prevails amongst all who are interested in the production of sugar in the British Colonies.

¹ The reference is to the squadron maintained by Great Britain on the West African coast. Its operations were not directed against British subjects only, but also—and in fact chiefly—against foreigners carrying on the slave trade in contravention of the treaties of their respective countries with Great Britain.

² This set of resolutions was the final report of the Committee presided over by Lord George Bentinck. Lord George himself was a convinced sugar protectionist, and the draft report prepared by him was a long argument, reinforced by many

2. That this distress has partially existed for several years; and though it has been much more severely experienced within the last 12 months, it cannot be exclusively attributed to causes of only recent operation.

3. That Slave Emancipation was carried into effect without sufficient provision having been made for providing many of the Colonies with an adequate command of free labour, and the rate of wages therein has consequently been very high, and the cost of production unduly enhanced.

4. That the late fall in the price of Sugar has led to a considerable diminution in the wages of labour in many of the British Tropical Colonies, which has been submitted to, except on the part of the Creoles of British Guiana, who, it may be hoped, will speedily follow the example already set them by the African and Portuguese immigrants of that colony.¹ And with respect to Jamaica, there is an absence of official reports as to any present reduction of wages, and the evidence is limited to partial success on particular estates.

5. That the British possessions have capabilities for the supply of Sugar far exceeding the probable consumption of the United Kingdom, and that their ultimate prosperity must therefore depend upon the means of successful competition with foreign producers, rather than upon any permanent protection of their produce in the British market.

6. That the change made in the Sugar duties by the Act of 1846,² without any accompanying remedy for the difficulties of production by free labour in the British Colonies, has precipitated the ruin of these possessions by aggravating the pressure under which they laboured from the foregoing causes.

7. That many estates in the British Colonies have been already abandoned, that many more are now in course of abandonment, and that from this cause a very serious diminution is to be apprehended in the total amount of production. That the first effect of this diminution will be an increase in the price of Sugar, and the ultimate effect a greater extension to the growth of Sugar in slave countries, and a greater impetus to slavery and the slave trade.

8. That if such diminution of production takes place, the richer estates remaining in cultivation will have the several advantages of

statistics, and designed to show that protection was at any rate a temporary necessity. Several alternative sets of resolutions were proposed, and the set finally passed was derived from several sources. The resolution proposing a six years' protection was carried by one vote in the absence—presumably deliberate—of two leading Peelites, Gladstone and Cardwell. It is said that overwork connected with his post as Chairman of this important Committee brought on Lord George Bentinck's death, which occurred a few months afterwards.

¹ In the years immediately following emancipation, and again in 1845-7, there was an influx of some thousands of immigrants from Madeira into British Guiana—checked in both cases by an alarming outbreak of disease. The Portuguese mostly applied themselves not to field labour but to huckstering and retail trade.

² See above, Section IV, No. 11.

a larger command of labour, of lower wages, of a lessened entire cost of production, and, if such exists, of a higher price. That a share of the advantages of a higher price in this market by the foreign producer is a consequence inseparable from the policy of reduced protection, established by the changes in the Sugar Duties by the Acts of 1844, 1845,¹ and 1846.

9. That the greatest necessity exists for an immediate application of relief.

10. That from the evidence taken by the Committee, it appears clear that the present mode of levying the duties on Sugar imposes a great practical disadvantage upon many of the producers in the British Colonies.

11. That whereas considerable time must elapse before any measures proposed for securing an ample supply of Labour, or Laws to be enacted against Vagrancy and Squatting,² can be carried into effect, and the success of those measures will depend mainly upon the co-operation and assistance of the resident planters and agents, and the state of distress to which the planters are now reduced is such as to preclude the possibility of any outlay on their parts for the reception, still more for the payment or maintenance, however short the contracts, of any Immigrants placed by the Government within their reach; and whereas they are unable at present to bear any portion of the expense of enforcing Laws for the suppression of Vagrancy, and the removal of persons from Lands of which they may have illegally taken possession, but on the contrary, they have in many instances, in order to prevent further loss, already determined upon abandoning their own properties: To meet these difficulties, Your Committee recommend a Differential Duty of 10s. in favour of Sugar the produce of British Possessions, for a period of Six Years; being of opinion that this temporary encouragement would have the effect of preventing the immediate and otherwise inevitable abandonment of the majority of the estates, and secure time for bringing into operation the intended measures of relief.

12. That Your Committee are of opinion that in any system of Immigration which may be adopted, great care must be taken by Her Majesty's Government to prevent any renewal of African Slave Dealing.

29 May 1848.

The Sugar Duties Act of 1845 (8 & 9 Vict., cap. 5) was based, like that of 1844 (see above, Section IV, No. 8), on a distinction between foreign free-grown sugar, which was admitted at a moderate differential duty, and foreign slave-grown sugar, on which the duties were prohibitive; but Peel made use of his surplus to lower the rates of duty on colonial and foreign free-grown, with the object of stimulating consumption. The two Acts were part of one and the same plan, the state of the revenue not allowing of its completion in the first year.

² The 'squatting' here referred to was simply, as in the United States, occupation of land without legal title, not pastoral occupation, which is a derivative Australian use of the term.

DESPATCH FROM GREY TO WALKER

(P.P., 1847-8, xlv.)

Downing-street, 30 June 1848.

SIR,

I have to acknowledge the receipt of Mr. Light's despatch of the 3d May, separate, transmitting his annual report on the Blue Book for the year 1847.

1. I cannot omit this opportunity of remarking upon the conclusive evidence which this report affords of the really injurious effect upon all classes of the inhabitants of British Guiana, of that system of protection for their produce to which the planters so earnestly cling. The high rate of wages, it is clear, far from contributing to the real welfare or to the civilization of the Negroes, has, on the contrary, as might have been expected, from the sudden change in their position, tended to give them habits of idleness, and to produce that demoralization of which idleness, amongst men of whatever race or of whatever rank, is the invariable source.

2. At the same time, this high rate of wages has diminished the amount of labour which the Negro has been willing to perform, and rendered it uncertain and irregular, to the ruin of the planters. But I cannot blame the planters for outbidding each other, and thus keeping up this extravagant rate of wages, which has proved so injurious. All experience shows that no understanding amongst employers can long keep down wages below their natural rate, as determined by the supply of labour and the price of the article produced by the labourers.

3. Hence the high rate of wages in Guiana is directly traceable to the laws passed in this country for keeping up the price of sugar, which have had the further effect of stimulating production in the eastern possessions of the British Crown, from which the supply of sugar to the home market has in the last few years so largely increased.

4. I hope that the Guiana planters will calmly weigh these considerations, and that being induced to believe that the protective system has not really been of advantage to them, they will not yield to the panic created by the difficulties of their present position, but will seriously apply themselves to those improvements which it is in their power to effect, and by which alone they can hope to attain to prosperity.

5. The measure which has just been proposed to Parliament by Her Majesty's Government will, I trust, be viewed as a proof of our earnest desire to do whatever is possible for their benefit; but still, neither these nor any other measures which it is in the power of Parliament to adopt can be of any material service to them, otherwise than by encouraging their own exertions.

I have, &c.

(signed) GREY.

EXTRACT FROM MINUTES OF COMBINED COURT
OF BRITISH GUIANA (January 23, 1850)

(P.P., 1851, xxxix.)

Mr. CROAL moves the resolutions in regard to the resumption of immigration, of which he gave notice yesterday.

Resolved,

‘1st. That the present distressed state of the agricultural interests of British Guiana are greatly aggravated by the want of continuous labour.

2d. That to mitigate the present distress as much as possible, it is necessary that a large influx of immigrants into the colony should take place without delay.

3d. That judging from the past, it is the opinion of this Court that the only place from which a sufficient supply of immigrants can be procured in time is from the East Indies.

4th. That his Excellency the Governor be requested to apply to the Right honourable Her Majesty’s Principal Secretary of State for the Colonies, to authorize the exportation of 10,000 Coolies from Calcutta into British Guiana, under proper arrangements, and that the Loan Commissioners be authorized to raise money to defray the expenses incidental to the importation of a number not exceeding 10,000 immigrants provided they can negotiate with Her Majesty’s Government to advance the money at par on the bonds of the colony.

5th. That a scheme of regulations be proposed by the Commissioners of Immigration in respect to the services of the Coolies and nature of contracts, to be submitted to his Excellency the Governor and Court of Policy for their approval, with a request that the same be transmitted to the Right honourable the Secretary of State, but in such regulations no stipulation shall be made for providing the immigrant with a return passage at the expense of the colony.

6th. That parties requiring the services of such immigrants shall send in their applications by a specified time, and shall also engage to pay back to the colony one-half of the passage-money; and all such parties as have Coolie immigrants now under indentures on their estates, shall have a preference of supply from the new importations to the extent at least of the number who may actually leave the colony by claiming the return passage.’

The original resolutions were then put.

The Court divided.

Yea.—Messrs. Craig, O’Donoghue, Brand, Croal, Haynes, Bean, Pollard, Government Secretary, Ferguson, High Sheriff. Nay.—

Carried.

(True extract)

(signed)

W. WALKER, Secretary.

DESPATCH FROM BARKLY TO PAKINGTON

(April 21, 1852) (EXTRACT)¹*(P.P., 1852, xxxi.)*

Immigration must long continue of first necessity in this colony. Were it checked, cultivation must once more fall off, and improvement languish. Encouraged, though a trying ordeal is still to be gone through, I entertain no manner of doubt that British Guiana in the course of a few years will be able to furnish an unlimited supply of tropical produce, in successful competition with any country in the world.

In writing thus, more sanguinely than I have ever yet done, I by no means seek to conceal the fact that much distress will result from a continuance of present low prices. More disastrous still would be the effects of any further fall, until we are better prepared to encounter it. But it is important to distinguish the present pressure from that which almost annihilated the colony during the general crisis of 1847-8. At that period the fall of price was so sudden and so enormous, the cost of production on the other hand so high, that a universal panic prevailed, and the most sanguine despaired of continuing to grow sugar so as to pay. Now the partial relapse in price affects in a very different degree three different classes of proprietors.

The first class are those possessing estates in full cultivation, making crops approaching those of slavery,—often larger,—the thousand hogsheads having in one or two instances been turned last year. On these they have or are engaged in putting draining engines of great power; vacuum pans, centrifugal machines, and every description of machinery found to succeed in the beet-root factories of Belgium and France. The fall in price has reduced their profits, which would have been handsome, and deferred their hope of reimbursement for the heavy outlay incurred in keeping their estates together in times past; but with such estates it is no longer a question of abandonment; it is a race of scientific improvements, in which, with their immense resources, they must triumph. They alone would suffice in the worst event to maintain British Guiana as a sugar-exporting country of the first class, and to absorb the labour thrown out of employment elsewhere.

The new class of resident proprietors, who during the late crisis purchased fine properties at almost nominal prices, comes second.

¹ Sir Henry Barkly, the son of a West India merchant and proprietor, was Governor of British Guiana from 1848 to 1853, and afterwards successively of Jamaica, Victoria, Mauritius, and the Cape. At the time of his appointment to British Guiana, which was designed to conciliate the planters, he was a Peelite M.P. His policy at the Cape, particularly in regard to the diamond fields, has been a good deal criticized, but there can be no doubt of the extraordinary success of his earlier Governorships or of the high qualities—the combination of firmness and conciliation, the active mind, and the sound judgement—by which the success was earned.

Their estates are likewise in process of restoration and improvement, but under less advantageous circumstances than those of the wealthier class before alluded to; for though they had generally acquired great practical skill as managers for absentee proprietors, and are keenly alive to the progress of the age, they mostly began with very limited capitals, and are either indebted to the local banks on bills renewable from time to time,—a most extravagant mode of raising money,—or to small capitalists at home, induced by the prospect of large profits to step forward at a time when the old established mercantile firms had firmly closed their ledgers to all fresh advances. Speculations of this sort having in most cases been entered into a year or two ago, on the assumption that sugar would continue worth 15*l.* per hogshead,—which seemed then no unreasonable hypothesis,—the sudden fall to 10*l.* or even lower must much disturb the calculation, and occasion no slight embarrassment to all concerned. I trust, however, that with fair seasons and good crops most of this class may yet weather the storm.

The third class are the owners of such heavily-mortgaged and half-abandoned estates as struggled over the shock of 1847-9, though in so hopelessly encumbered and crippled a state as to render their retention by their present proprietors possible under no circumstances short of a positive miracle. Such estates have in some instances been kept in a state of semi-cultivation at considerable expense to the creditors, but generally speaking are in very indifferent order, with buildings and machinery completely dilapidated. The greater number must now inevitably be forced to execution sale; but I much fear, unless bought in by the mortgagees, that purchasers will not under present circumstances be found willing and able to undertake their resuscitation.

24

DESPATCH FROM HARRIS TO PAKINGTON
(EXTRACTS)

(*P.P.*, 1852-3, lxvii.)

Trinidad, 7 August 1852.

SIR,

I have the honour to forward to you some Resolutions passed by the Legislative Council, at its last meeting, which urgently recommend the continuance of immigration into this colony, and request that the Imperial Government will assist in procuring an additional loan of 100,000*l.*, to be applied to that purpose.

It is probable that the greater portion of the present loan of 100,000*l.* will be expended by the end of next year; and it is most important for the colony that it should be in a position to continue to receive a supply of efficient labour.

After having watched the action and effect of immigration with great anxiety and care, and with no very favourable opinion of it at first, I have no hesitation in saying that on it depends, under God, the welfare of the island.

It is, moreover, the best, perhaps the only, assistance which can, under present circumstances, be afforded by the British Government, so that all classes should receive a fair and proportionate benefit; any other, it may be feared, would only go to increase the wages of the labourer, a result the good effect of which may be considered more than doubtful.

But in requesting, Sir, your favourable consideration of this subject, it is my duty to show that facts can be produced which make manifest the advantages derived from immigration, and which will warrant a continuance of the system.

I think the general state of this colony, after all the severe trials through which it has passed, and under which it is still suffering, may be fairly considered as favourable.

The income is gradually increasing, and the quantity of its exports have greatly augmented within the last six years. The yearly average of the last five years, from 1847 to 1851 inclusive, during which period the Coolie labour has been introduced, is larger in the most important articles than that of any previous five years of which the exports are recorded. . . .

The crop for this year is the largest ever shipped, and there is every probability of a considerable increase next year.

During this season also, the best, though a very disagreeable test has been applied, for proving that the manufacture of sugar has greatly improved, whilst the cost has diminished by at least one-third; for the weather during the crop time was most unfavourable, and consequently greatly impeded the operations of the planter. I am happy to say, notwithstanding this, the large crop I have mentioned was made with unusual rapidity.

Now, I find it almost universally the opinion of the planters that these results could not be effected without the Coolies, in fact, that without them the cultivation of the cane could not be carried on; for though they can depend on the Negro population to a certain extent for assistance during the crop, yet they manifest annually a greater disinclination to the ordinary operations of the cane-field, and, in fact, the planters are almost entirely dependent on the Coolie for the important service of weeding the canes, any neglect of which must cause the failure of the crop. . . .

The prospect of returning home at an early period has a tendency to unsettle the Coolies, and it is to be regretted that the colony should be required to find them return passages. But I could not recommend that this condition should be withdrawn or that a longer period should be fixed for their residence here, unless it was distinctly

understood that a much larger proportion of women than have as yet arrived should accompany them.

The Coolies are far better off here than in their own country, and the greater number would, I have no doubt, settle in the island but for that one omission, to which I have frequently drawn attention, but as yet without any effect.

I have, etc.

(signed) HARRIS.

25

DESPATCH FROM BARKLY TO NEWCASTLE

(May 26, 1854) [EXTRACT]

(*P.P.*, 1854, xliii.)

Having thus, I fear at inconvenient length, endeavoured to bring the condition of the island incidentally under your Grace's notice, I shall not venture to trespass much further by any attempt to embody in systematic shape the ideas suggested to my own mind in regard to its future prospects. The subject indeed is so complex and difficult that it would seem rash to speak dogmatically respecting it; on the strength of observations necessarily rapid, and perhaps in some cases superficial.

This much, however, I may safely assert, that the impressions produced on my mind by my tour were on the whole of a more encouraging nature than I had, from the gloomy accounts given by all parties, ventured to anticipate, and I certainly returned with a higher opinion of the capabilities of the island, and a more hopeful estimate of its social position, than I had when I started.

The prospects of the cultivators of sugar especially appear to me by no means of the desperate character which unfortunately it has become usual to ascribe to them. The worst effects of competition with the whole world in the production of their staple are now realized, and yet, speaking dispassionately, and with an earnest desire to represent things in their true light, so far as my information goes, I do not believe that any plantation in the island, which was at the beginning of the year in tolerable order, and on which no extraordinary outlay for repairs to works or extension of canefield had to be incurred, will entail a loss on its proprietor. To go further, wherever the cultivation is on a sufficient scale to yield, say from 150 hogsheads upwards, I am confident the plantation will leave a handsome return, even when carried on by hired agency alone. This year, with the aid of an unnaturally high price for rum, many making less sugar are likely to do well; but, as a general rule, from all I have heard, crops under 100 hogsheads can scarcely yield a profit in the present state of Jamaica, unless their proprietors are not only resident,

but competent from previous training to conduct the management in person.

I have no means of ascertaining at the moment the proportion of plantations now making over and under this latter mark, throughout the island; but, upon data obtained in some of the parishes I visited, I think it may be assumed that two-fifths would stand in the former, and three-fifths in the latter category. On the other hand, it is shown by a return laid before the Assembly last year, and from which I have already frequently quoted, that more than half the sugar estates in cultivation on the 31st December 1852 still belonged to absentees, notwithstanding the rapid transfer of the smaller properties to practical planters, which it will be perceived from my journal is going on.

Without considering absenteeism therefore a primary cause of West India distress, but rather as an inevitable evil in tropical climates, whenever there is a sufficient margin of profit to support a proprietor as he would wish to live in the mother-country, and enable an attorney to make a fortune at the risk of his life, I think I am justified in anticipating a further diminution of this evil in the present circumstances of this island, attended no doubt by improvement in many respects.

For this there is no doubt ample room, though I was certainly rejoiced to find that the Jamaica planters of the present day are by no means the bigoted, narrow-minded race it has been the fashion to paint them, but as ready to adopt improved machinery, or better modes of manufacture, as their neighbours. A good deal of time was no doubt lost in all the sugar colonies whilst they allowed themselves to be deluded with the hope of a restoration of protecting duties; nor can Jamaica claim credit for being the first to awaken from this dream, and set to work in earnest to compete with the slave trade and slavery, by more scientific agriculture and more skilful manufacturing processes; but apart from the delusions of party strife at home, and the political disorders which were thereby unhappily fostered in the island, a valid reason has existed for this slower progress, in the fact of the reduced sale on which the manufacture of sugar is in most instances here conducted, which is necessarily much less conducive to the introduction of expensive apparatus than where, as in Guiana, manufactories are on a large basis.

Until within the last two or three years it may fairly be admitted that the vacuum-pan¹ was the only ascertained improvement in sugar-boiling applicable to the West Indies, and that was so costly that it was not deemed prudent, even in the last-named colony, where it has been used for a quarter of a century, to place it on any plantation making less than 500 hogsheads. Now there are not at the present

¹ The 'vacuum pan' was an apparatus for concentrating the clarified syrup by evaporation *in vacuo*: this formed part of the operation of 'boiling'. In an improved form, it is still in use.

moment more than three estates in Jamaica yielding such a crop, a fact which ought to be borne in mind when she is accused of not possessing a vacuum-pan, with the exception of that sent out by Smith's Jamaica Land Company to a small estate in Westmoreland, where it has never been put to work.

It may perhaps be hinted that in Barbadoes properties are even smaller, and that, notwithstanding their being so, such substitutes for the vacuum-pan as Gaddesden and Evans' or Schroder's disc-pan¹ have been longer and more widely introduced; and this brings me to another unquestionable cause of the slower progress of improvement in Jamaica, the deficient supply alike of native and imported labour. No man will erect superior machinery, or if he has erected it can hope to work it successfully, without a steady and certain command of labour. In Barbadoes this is attained by the density of the black population; in Guiana it has been effected by immigration alone.

It would occupy too much time to trace the causes which have almost deprived the planters of Jamaica of this latter resource. They may be briefly summed up in three words—'the Political Constitution' of the island, which, while it favoured, in the earlier essays made, every kind of jobbery and extravagance, has tended more and more, every day since, to vest political power in the hands of those who not unnaturally are averse to being subjected to any invasion of their monopoly of the labour market. That they have acted short-sightedly in this respect, some, even of the labourers themselves, begin to suspect, for I heard in some quarters regrets expressed by the small freeholders for the falling off in the demand for their poultry and provisions, occasioned by the return of so many coolies to Calcutta; but there still remains a large and I imagine preponderating party in the Assembly covertly opposed to all immigration whatever, though professing not to object to it, where, as at present, the entire expense is borne by the planters.

This party cherishes the conviction that Jamaica is destined to be the theatre on which the African race will eventually demonstrate its capacity for civilization, and looks with comparative complacency on the ruin of the sugar estates, in the expectation that by means of small settlements growing some one or other of the minor products for which the soil is suited the island can be restored to prosperity, or even rendered more flourishing than ever. Cordially sympathising with the feelings in which both these notions originate, I believe them nevertheless to be alike founded in fallacy. As respects the first, delighted as I should be to see this island recognised as the home of the free coloured race, and a refuge especially for that despised and ill-used branch of it which is likely sooner or later to be driven from

¹ The disc pans, of which there were several kinds, were alternative pieces of machinery for effecting the concentration, less expensive than the vacuum pan. All were substitutes for the old process of evaporation in simple copper pans.

the United States of America, I am firmly convinced that the surest mode of defeating this object would be to consummate the abandonment of the sugar estates, and the consequent withdrawal from the scene of European capital and European energy and intelligence.

In the second place, while I have no desire to discourage or undervalue the importance of these minor products, and, on the contrary, consider Jamaica singularly favoured by not depending on the cultivation of one or two staples only, but being equally adapted for sugar, coffee, cocoa, cotton, ginger, arrowroot, and a host of others, leaving the probability of her mineral treasures out of the question—I am bound to say that I see no signs whatever of the exports of the latter increasing as those of the former decline, and am so far from supposing that this will prove the case, that I consider it to follow as a matter of course that the same causes which, despite the fertility of the soil, and the enormous capital already invested in buildings, machinery, roads, drainage, &c., rendered it impossible to produce sugar at a remunerative price, would suffice to prevent the application of either labour or capital to any fresh species of cultivation.

Without wishing, therefore, to give undue prominency to one species of industry at the expense of others, it seems to me no exaggeration to assert that the issue at the present moment lies between Jamaica with its sugar cultivation resuscitated, and Jamaica reduced to the condition of desolation and semi-barbarism from which St. Domingo, after the lapse of half-a-century, shows but a glimmer of revival; and though such a revolution might perchance be bloodless, and accomplished by scarcely perceptible degrees, it would assuredly be none the less detrimental to the character and the prospects of the African race, and a thousandfold worse for the emancipated peasantry of Jamaica than any possible contamination they could receive from association with coolies or Chinese, now so much dreaded.

For the moment, possibly, cultivation has been reduced in most districts to the level of the supply of labour, but as confidence revives there will be a tendency to increase it as fast as that supply can be augmented, and a very considerable immigration is in my opinion required, in order to bring it to such a point as will enable the island once more to re-establish its financial credit, and to keep up those establishments which are essential for the maintenance of order and the improvement of the condition of the people.

I am not unconscious that immigration is attended with heavier drawbacks here than in other colonies, the smaller scale of cultivation necessitating greater subdivision among the immigrants, and less expensive preparations for their reception on estates,—the lower rate of wages current,—the absence of constant medical supervision; these and other difficulties on which I need not at present expatiate, beset every experiment, and afford all the stronger reasons why the planters whilst seeking assistance from this source, should not neglect the

welfare or fail to conciliate the good feeling of the creole population, on whom they must at the same time be mainly dependent for a supply of labour.

Many planters, I am afraid, consider this hopeless, and anticipate that the creoles will gradually withdraw altogether from the estates, raise a bare subsistence for themselves in their provision grounds; and in the end give up the habits and pursuits of civilized life. I confess I could perceive few symptoms of any disposition of the sort in the course of my tour. That the negroes as a body are not conspicuous for industry cannot be denied by their warmest friends; but I hardly think any other race of men would have devoted themselves to unnecessary corporal exertion unless they had previously attained a far higher standard of civilization; and though they may often, through ignorance, have acted contrary to their true interests, and shown themselves little fit to be trusted with the extensive political privileges to which they succeeded without any preparation at all in this island, they have, in my opinion, behaved, on the whole, better than could have been reasonably expected; and I see very little ground for alleging that they have actually retrograded.

The real truth is, that of late years injustice has been done to the character of the negroes, in consequence of the disappointment resulting from the over-estimate put forward on all sides of their advancement in civilization at the epoch of emancipation; the advocates of that measure gladly suffering themselves to be deceived by mere external demonstrations, whilst its opponents found their account in allowing it to be proved for them that slavery was not so brutalizing and debasing in its effects as the anti-slavery party at other times somewhat inconsistently asserted.

That a great deal was at that time wanted to elevate the character, and to infuse tastes calculated to promote both mental and bodily exertion, seems now universally conceded; and as less progress seems since to have been made in Jamaica than anywhere, there will be ample room for a minister of public instruction, whenever the new form of government is inaugurated, to distinguish himself in the extension of education, the enforcement of sanitary precautions, and other similar tasks.

Were proper measures promptly adopted and vigorously executed for the promotion of these objects there would be little cause to fear for the future prosperity of Jamaica; but the experience I have gained prepares me for many impediments to the successful working of the new system,—not the least being the utter absence of unanimity on every question, arising from the unfortunate jealousies and mutual distrust prevailing among different classes, to counteract which, by inculcating the absolute necessity of concord and union to save the country, was my chief aim in my replies to the eighteen congratulatory addresses with which I was honoured in the course of my tour.

VI

NATIVE AND FRONTIER POLICY

A. SOUTH AFRICA

THE great problem of the twenties in South Africa had been that of the status of the Hottentot and the slave within the colonial border: but with the Fiftieth Ordinance of 1828 and the Abolition Act of 1833 these questions recede into the background and give place to the ever-present problem of the frontier, where a body of dour, independent farmers—chiefly of Dutch descent—were in contact with hordes of ignorant, crafty, untamed savages. It was all very well for missionaries and Colonial Office clerks and Secretaries of State to devise admirable plans for introducing more enlightened methods of dealing with these native tribes: Governors, with whom the immediate responsibility lay, had to deal with men as they were, and not as they would wish them [1]. On the northern frontier, indeed, it was with roving bands of robbers that the settlers were mainly concerned, but in the east they had to deal with powerful tribes, who in 1834 made an organized attack, in greater force than ever before, on the colonial border. Sir Benjamin D'Urban, sympathizing with the frontier farmers, proposed to annex the territory of the offending tribes and thereby obtain a more defensible frontier [2]. At first his intention was to expel the tribes; on second thoughts he decided instead to attempt by firm and judicious government to reclaim and civilize them [3]. But neither of these policies commended itself to the Colonial Office: Lord Glenelg, reacting against the earlier tendency to treat the rights of the natives as of little or no account, convinced himself that the war had been provoked by the European settlers, and that an annexation inconsistent alike with sound financial policy and with justice ought at once to be revoked [4]. The instrument of the new policy was to be a man with considerable frontier experience, Captain Andries Stockenström. Stockenström carried out his instructions, and framed a new set of treaties with the frontier tribes [5]; but it soon became clear that the new policy, far from solving the native problem, had merely increased its complexity. A number of the frontier farmers, already discontented with slave emancipation and with the improvement in the status of the Hottentot, despaired so utterly of finding security under the new régime that they moved off into the interior [6]. Lord Glenelg might deplore the emigration [7], but he was powerless to prevent it. Thus occurred the Great Trek—the beginning of South African disunion. Sir George Napier, D'Urban's successor, moreover, had to report that on the frontier itself the treaties were in fact a failure [8].

The bulk of the emigrants proceeded to Natal, thus at once raising the question whether Great Britain could allow an independent state to be established on the South African coast. Napier's answer was in the negative, and Russell, who was then at the Colonial Office, was ready to be convinced. Stanley was less compliant, and talked of forcing the emigrants to return, but Napier had little difficulty in showing him that his alternative was quite impracticable [9]. Natal was accordingly annexed, and con-

ciliatory promises were made to the Boers, on the understanding that there should be no interference with native rights [10]. On the eastern frontier of the Cape the false step had been taken, and it was a more difficult task to retrace it, though the frontier farmers' continual losses and complaints showed how far the problem was from being solved [11]. The question was whether it was really soluble: Stephen thought not, and opposed any fundamental change of policy [12]. None the less a change was at hand—the consequence, once again, of a war. Lord Grey perceived that the only hope of putting an end to wars and making real progress lay not in shrinking from responsibility but in accepting it [13]. It seemed indeed that responsibility was to be accepted for the results of the Great Trek itself. Treaties with the Griqua and Basuto chiefs had led the British Government already to exercise some supervision over affairs between the Orange and Vaal Rivers; and a section at least of the Boers wished the Government to go farther and assume full control. Sir Harry Smith, who dearly loved a *coup de théâtre*, lent a ready ear to the project, and annexed the territory without more ado [14]; and the measure was approved by Lord Grey, who had visions of reducing South Africa to order and in due course civilizing it, and still thought that this might be done without much expense [15]. Meanwhile the earlier acquisition of Natal had brought with it a native problem of extreme difficulty, for the peace and order established there had attracted more natives than the Government knew what to do with. Lord Grey's theory was that it would be both best and cheapest to govern them through their chiefs [16], but the difficulty was, as the man on the spot, Theophilus Shepstone, pointed out, that many of them were a mere disorganized rabble of refugees without chiefs at all [17]. His 'location' policy was finally approved by Grey, who, however, was anxious that it should not be allowed to develop into a policy of segregation [18]. Then suddenly, from being a workshop of native policy, South Africa became yet again a theatre of war.

The increasing willingness of England to allow the colonies to govern themselves was coupled with an increasing unwillingness to incur expense on their account, and public opinion was all for letting colonists and Kaffirs fight it out among themselves [19]. Lord Grey regarded such a policy as an unworthy abdication of responsibility [20], but his opponents were strong and gradually he was driven from his position. In September 1851 he admitted that his hopes that the Orange River annexation would lead to a satisfactory adjustment of the relations of the races there had been sadly disappointed [21], and four months later the policy of withdrawal from responsibility which he then foreshadowed led to the recognition of the Boers beyond the Vaal, who had so far been ignored, as an independent people [22]. The colonists on the eastern frontier of the Cape were at the same time warned that there was a limit to the amount that Parliament was prepared to pay for the pleasure of fighting Kaffir wars, and that they must do their best to see that they did not occur again [23]. It was left to Grey's successors to carry still farther the policy thus initiated and withdraw from the Orange River Sovereignty. In 1853 Sir George Clerk was sent out as Special Commissioner, and the unwillingness of a substantial party among the colonists to receive their independence did not deter him from carrying out the task allotted to him [24, 25]. Early in

1854 negotiations were completed, and the Imperial Government had, so far as it could, limited its responsibilities on the northern frontier [26].

At last it was possible to concentrate upon the government of the natives within the colonial border, and under Sir George Grey the Cape, too, like Natal, began to develop a native policy of its own. The danger there, in Sir G. Grey's opinion, was that the power of the chiefs was excessive. His main objects were to make it clear that they governed only as agents of the British Government and by the advice of its magistrates; and to lead the tribes, as he had attempted to do in New Zealand,¹ towards civilization [28, 29]. The Imperial Government watched the experiment with interest and approbation, and aided it from Imperial funds [27]. Thus some of the errors and hesitations of the past had been abandoned, and a real responsibility had been assumed for the welfare of the native race. Some of the errors—but not all: for there remained the difficulty which Sir George Grey also saw and against which he in vain attempted to provide, that the Imperial Government had drawn boundaries where no boundaries could be drawn, had shut its eyes to responsibilities which it could not in fact evade, and by attempting to impose one unacceptable native policy upon South Africa had left South Africa with many native policies instead of one.²

I

DESPATCH FROM COLE TO STANLEY³

(P.P., 1835, xxxix.)

London, 15 Nov. 1833.

SIR,

I have the honour to acknowledge the receipt of your letter of the 13th instant, containing your observations on an ordinance which was passed by me as Governor of the Cape of Good Hope in June last, relative to the commandos, and requesting to be furnished with a full report of the circumstances which induced me, with the advice of the council, to renew and confirm the extraordinary powers which it was proposed by that ordinance to vest in the magistracy of the frontier.

The circumstances were shortly as follows : During the last four years some wandering hordes on the northern frontier of the colony have become not merely troublesome, but have organized a system of murder and depredation to an extent that has seldom or ever been equalled in past times; whole families of colonists residing within the frontier line have been attacked and butchered by those hordes, composed of the outcasts and refuse of the colony and native tribes; their houses burnt down, and the whole of their live stock and every article belonging to them either carried off or destroyed. The

¹ See below, Section VI. B, No. 11.

² See Sir G. Grey's federation despatch : Section I, No. 56.

³ Sir Galbraith Lowry Cole, who had commanded a division during the greater part of the Peninsular War, was Governor of Mauritius from 1823 to 1828 and Governor of the Cape from 1828 to 1833. He had just returned to England.

approach of these barbarians can neither be foreseen nor provided against beforehand. They come suddenly and in great force from the deserts, and are generally well advanced on their return thither before any sufficient force can be mustered, either for punishing their crimes or rescuing the plunder from their grasp.

From the earliest times the frontiers were defended by the Burgher force alone : the farmers are bound to appear mounted and armed whenever called on by due authority, and are punishable by law for refusing to yield this service ; indeed every man fit for service is equally bound to perform this duty in case of necessity ; but with the laxity usual in the older colonial enactments, the punishments due to infractions of the law are not determined. Disobedience to the orders of Government was visited with corporal punishment, fine, imprisonment or banishment, as to the Dutch governor and council seemed fit.

Under the present system for the administration of justice, the judges and magistrates cannot enforce obedience to laws so defective. The people who are most immediately exposed to incursions of the wandering tribes have, many of them, refused of late to attend the summons of their field cornets,¹ alleging that as they pay taxes in common with their fellow colonists, they have an equal claim with them to protection from the Government without rendering their personal services. In this opinion, which is no doubt theoretically right, they are studiously encouraged and supported by a portion of the public press, and the consequence must be that for want of union for mutual protection they will fall in detail before their savage and remorseless invaders. An instance has already occurred of a field commandant having resigned his office because, being unable to make others do their duty, he could not fulfil his own. It was not my intention to frame any new law on this subject, for I was fully aware of its extreme difficulty. I therefore took the law as I found it, not merely as it stands in Lord Macartney's proclamation,² but as it exists in the Acts and records of the old Dutch Government. That proclamation itself is not an original Act, but rests on the same foundation. I have sought merely to give it force, by determining penalties and punishments, by pointing out the persons who are to exercise its powers, and by giving the necessary jurisdiction to the colonial magistracy.

It does not seem necessary that I should enter into any examination of what may have been the character of the commando system in former times, or what may be the opinions of recent writers on the subject. If it was introduced and used as the means of aggression

¹ The 'field cornets' were the principal officers of the wards into which each district was divided, and had certain duties of an administrative and judicial kind.

² This proclamation, dated May 20, 1797, empowered district magistrates to call out the burghers in case of emergency. Defaulters were to be punished, but the punishment was not specified.

and atrocious cruelty, it certainly merits the utmost reprobation ; but if, as I believe it to have been, it was resorted to as the only possible means to prevent or punish incursions into the colonial territory, the whole of which must have been originally wrested from the aborigines, the abuse of the system ought scarcely to furnish a sufficient reason for its entire abolition. It may suit the views of some writers to hold up the local government and the colonists to the detestation of mankind, as the authors and abettors of a system of the most diabolical atrocities, and to represent the native tribes as the most injured and innocent of human beings,¹ but those who have had the opportunity of taking a dispassionate view of the subject will judge differently. The atrocities imputed against the colonists are now of rare occurrence, and seldom fail to bring down punishment on their heads when the guilty individuals can be traced ; and such is their dread of the criminal laws, that many are afraid to defend their persons and property in even a lawful manner. The natives themselves are frequently engaged in wars of plunder and extermination, the stronger against the weaker ; some of the latter have even been reduced to the practice of cannibalism, and the colony is at this moment almost the only asylum open to those wretched people, when they are fortunate enough to reach it. The boundary line of the colony, except in front of Caffraria, has not been advanced for a great number of years ; that to the north and north-east was fixed full 60 years ago, and no colonist is allowed to occupy lands beyond that line. It is upon several points on this line that the colonists are most liable to the attacks of wandering tribes ; and considering the abject poverty as well as the extreme ferocity of these people, whose only riches consist of bows and poisoned arrows, it cannot be supposed that the colonists are moved by cupidity in endeavouring to repel their attacks and follow up their retreat. The desire of vengeance and punishment is only natural, but even this is more frequently defeated than gratified.

The whole of that part of the colony situated along the northern frontier, and to a great distance behind it, is very thinly inhabited, the farms being usually many miles apart. The nearest seat of magistracy, that of Beaufort, is not less than 100 or 150 miles from the frontier ; and it is obvious that the ordinary process of the law cannot be made available for the prevention or punishment of those acts, which seem to necessitate the continuance of the commando system. The remedy cannot always even now be applied in proper time, and were the whole frontier garnished with magistrates and constables, its protection would still be impracticable without the

¹ The reference is doubtless to *Researches in South Africa*, published in 1828 by Dr. John Philip, the Superintendent of the London Missionary Society in South Africa. Its attacks on colonial treatment of the native races had a very great effect on public opinion in England, and for some years Dr. Philip had great influence on the policy of the Colonial Office in relation to South African affairs.

commando or some other armed force. In order to be useful in cases of extreme exigency, the commando law, so long as it lasts, must always be in operation, or it must utterly fail in its object, and the marauding tribes will speedily avail themselves of the impunity with which their aggressions may be committed.

On the Caffre frontier, which is to a certain extent guarded by military posts and patrols, the commandos are not called out except in aid of the military, which rarely happens, and not even then without a previous reference to the Government. In those parts of the colony remote from the frontiers the commandos are never called out ; there the permanent rules for the habitual conduct of the magistracy and of the people at large, as well as the ordinary process of law, have full force and effect: they extend indeed throughout the whole settlement at all times, though locally and temporarily superseded by the commando in cases of attack and extensive plunder by armed enemies.

In conclusion, I beg leave to express my opinion, that the commando system ought not to be abolished until some better one shall be devised to supply its place. Although my attention has been frequently directed to this object, I confess that I have not been fortunate enough to perceive the means of altering it for the better. The colony cannot bear the expense of military protection ; the powers of the law are insufficient for the purpose, and must remain so ; and unless the inhabitants of the frontiers are made to defend themselves by their personal services, they must sink under the danger to which their distant situation exposes them. In the consideration of this subject it ought not to be forgotten that the colonial courts have no jurisdiction, and their process cannot be executed beyond the boundary line ; the consequence of which is, that British subjects may commit any species of crime beyond that line, and return within the colony with perfect impunity.

I have, &c.

(signed) G. LOWRY COLE.

DESPATCH FROM D'URBAN TO ABERDEEN (June 19, 1835) [EXTRACT] AND PROCLAMATION OF D'URBAN¹
(P.P., 1836, xxxix.)

It now becomes necessary that I should explain to your Lordship fully the powerful, and indeed irresistible reasons which have compelled me, in the conscientious discharge of my duty, and having no power of previous reference to higher authority, to adopt the important measure recorded in the documents A and B. This extension of the colonial border had now become not only expedient, but absolutely and indispensably necessary and unavoidable. The only measure that could promise to repay the expenses of the war, which the colony had been most unwillingly compelled to wage *pro aris et focis*, and place a defensible barrier between the heart of the colony and the savage tribes of Central Africa, provide security for the future, and a just indemnification for the past.

It became, therefore, imperative upon me, as a faithful servant of the King, and a conscientious governor, charged (by the peculiar nature of the crisis) as well with the present as the future interests of such a colony, to take upon me this responsibility (feeling, I entreat your Lordship to believe, all its awful weight), and not to let slip the golden opportunity (which would rapidly have passed away, and which, therefore, left me no time to take His Majesty's previous pleasure thereon) of doing now, when it could be done with the most rigid adherence to principles of justice, that which policy, the security and the future prosperity, nay, I may truly say, existence of the colony, alike demanded. A brief reference to the public correspondence of the Colonial Department with the successive governors of the colony for years past, indeed ever since it has belonged to the British Crown (and its previous history, as a colony of Holland, is the same), will suffice to show your Lordship that the main and insuperable impediment to its growing prosperity, and the source of its greatest misfortunes, have ever been the insecurity of its frontier, arising from the character of the country through which the advancing boundary line has been successively traced; of this the two last extensions to the Fish River in 1812, and to the Keishkamma and Chumie in 1819, are remarkable and incontrovertible instances.

¹ Sir Benjamin D'Urban, who had gained distinction as a staff officer in the Napoleonic Wars, was Governor of the Cape from 1833 to 1837, having previously been Governor of the Leeward Islands for four, and of British Guiana for nine years. He has been accused of a bias in favour of the planters in the West Indies, and as we shall see was accused most vehemently of a similar bias in South Africa, but his acts show that he was no partisan of mere repression and that he saw a side of the native question which many would not see. It must be admitted, however, that he was intolerant of opposition. He was recalled from the Cape in 1837: later he resumed his military career, and at the time of his death in 1849 was Commander-in-Chief in Canada.

Both of these lines are involved in tangled jungles, impervious woody ravines, and in fact made by nature for the preparatory lurking place of the savage, before he springs upon his prey, and for his retreat and concealment when he has secured it. Hence have followed without intermission constantly recurring evils, arising from hostile inroads of the most barbarous and desolating kinds, penetrating, as soon as begun, into the very vitals of the unprepared country, and 'carrying the tidings in the blow,' (of which the last, as well in extent as in atrocity, and the consequent misery which it has inflicted, is an unequalled example); or periods of nominal peace, when the same savages have continually carried on a ruinous and vexatious system of successful cattle-stealing, amounting to many hundreds carried off every year. And now this last barbarous and bloody inroad, which has filled the cup of distress to overflowing, has spread such universal consternation, that I may securely pledge my word to your Lordship, that unless a safer boundary be extended beyond the present frontier districts of Albany and Somerset, they will be altogether deserted, since not a farmer will venture to return to the occupation of lands where such certain loss and such frightful perils await him.

All these considerations well and carefully weighed, I felt it my imperative and conscientious duty to His Majesty, and to the colony confided to my care, to carry into effect this extension; and in this measure, alike dictated by policy, security and justice, let it not be said that it is unduly harsh or severe to the savages expelled; for, be it remembered, these had all, deeply and without provocation, dipped their hands in English blood; that they had involved whole districts in ruin and devastation, and that they had lost the country in question by the operations of a war which they had themselves so wantonly provoked. And here it may not be irrelevant to cite the opinion of a most benevolent and humane clergyman, Mr. Shrewsbury, chief of the Wesleyan mission in the colony, long resident among the Caffres, and experienced as well in their character as in colonial frontier history. It will be found in the Enclosure No. 14; and although its author is a man of peace and of religion, a teacher of the gospel, and, as all who know him will vouch, in every regard a most pious and exemplary christian minister, I think my measures are not quite so severe as those which he, in his conscience, considers necessary, and openly recommends. To this I also add (No. 15) the opinion of the Caffre character generally, given by another humane and very excellent clergyman, Mr. Boyce, long resident in Caffreland, to whom I referred the Colonial Office for information when he visited England early in 1834. And with regard to a country for the reception of the tribes dispossessed, there is an abundantly sufficient one for them all on the eastern bank of the Kye, and between that river and the Bashee, without in any measure crowding or injur-

ing its present inhabitants; that fertile territory being, as I know by personal observation, very thinly inhabited in proportion to its means of supporting inhabitants, large and fruitful districts of it, indeed, being without any at all.

Hintza¹ recently, in adverting to this subject, expressed not only his readiness but his earnest wish to receive and locate the tribes in question therein. It must, besides, be borne in mind, that the measure of adopting the Fingo nation² has removed nearly 20,000 souls from that country, all of whom raised from the soil not only their own subsistence but the greater part of that of the oppressors whom they served.

I may here add, that upon the grounds of comparative expenditure in the occupation and defence of the new boundary (to say nothing of the value of the province acquired as a counterpoise to whatever may be so incurred), the expense in fortification will be less, and the number of troops fewer, which I shall require for this purpose than for that of maintaining and defending the old border, considering its extent and character, and the fearful experience of the late disastrous inroads. . . .

(Enclosures in Enclosure 12.)

(A.)

PROCLAMATION.

By His Excellency Major-General Sir Benjamin D'Urban, Knight Commander of the Bath, of Hanover, &c., Major-General in His Majesty's Army, Governor of the Cape of Good Hope and its Dependencies, and Vice-Admiral of the same, and Commander-in-Chief of His Majesty's Forces in South Africa.

(signed) B. D'Urban, Major-General,
Governor and Commander-in-Chief.

Whereas in the months of December and January last past, the Caffre chiefs and their tribes inhabiting the country along the eastern frontier of His Britannic Majesty's colony of the Cape of Good Hope, and between that line and the River Kye, viz. 'Tyali, Macomo, Eno, Botma, T'Slambie, Dushanie, and others, their connexions and dependants, with the concurrence and countenance of Hintza, chief of the country between the Kye and the Bashee, and paramount chief of Caffreland, during a period of established peace and amity between the colony and these chiefs, without provocation, or any previous notice or declaration of war, suddenly and unexpectedly broke into the colonial frontier along its whole extent, at the same time laid waste all the country with fire and sword, savagely murdered the

¹ On Hintza, see the proclamation below.

² On the Fingoes, see above, p. 51, note 1.

unprepared and defenceless inhabitants of the farms, plundered and burnt their houses, carried off horses, cattle, sheep, &c. leaving these districts a desert.

And whereas, with the troops of the King my master, I have defeated, chastised and dispersed these chiefs and their tribes, and overrun and conquered their country, and thence penetrated into that of Hintza, compelling him to sue for peace and to accept the terms of it which I had offered, and which he has ratified. And whereas it is absolutely necessary to provide for the future security of the colony against such unprovoked aggressions, which can only be done by removing these treacherous and irreclaimable savages to a safer distance.

I now, therefore, in the name and behalf of His Britannic Majesty, and by virtue of the power vested in me as His Majesty's representative,

Do hereby proclaim and declare, that the eastern boundary of the colony of the Cape of Good Hope is, henceforward, extended eastward to the right bank of the Kye River; its new boundary, effected by this extension, being henceforth a line commencing at the source of the Kye River in the Stormberg Mountains, thence following its course along the right (or western) bank through the White Kye into the Great Kye, and thence to the mouth of the latter.

From the aforesaid country, which they have lost by the operations of the war which they had so wantonly provoked, and which they have justly forfeited, the above-mentioned chiefs, namely, 'Tyali, Macomo, Eno, Botma, T'Slambie, Dushanie, &c. with their tribes, are for ever expelled, and will be treated as enemies if they be found therein.

God save the King!

By his Excellency's command,

(signed) H. G. SMITH, Colonel,

Head Quarters on the Kye.

Chief of the Staff.

Given under my hand and seal, this 10th day of May 1835.

TREATY OF PEACE WITH THE GAIKA TRIBE¹

(P.P., 1836, xxxix.)

(Enclosure No. 5, in No. 9.)

NOTICE.

Peace has been concluded by the Governor and Commander-in-chief, in the name of His Majesty, with all the Caffre tribes lately in arms against the colony, comprising those of Gaika, T'Slambie, and their connexions and dependents; who have thereupon, at their own earnest supplication, become subjects of His Majesty, amenable to, and under the protection of, the colonial laws and government; and who are located and established accordingly within the colony, in the province of Queen Adelaide,² by the following treaties of peace, respectively granted to the tribes of Gaika and of T'Slambie.

(See A and B annexed.)

(A.)

Articles of a Treaty of Peace, granted to the Caffre family of Gaika and its Connexions and Dependents, in the name of the King of England, by His Britannic Majesty's Governor of the Colony of the Cape of Good Hope.

The above tribe, and its different branches and connexions, being therein personally represented by Macomo, Tyalie and Eno, for themselves; Kusia (son of Guanya), for Suta and her son Sandili; Fadani, for Bothma: and these chiefs, for the whole collectively, and each individually, and independently for himself and his own immediate family, or for that which he represents, having supplicated for mercy and peace at the hands of the Governor, and prayed to be admitted and received as subjects of the King of England, and to live henceforth under the protection and authority of the English laws, within His Majesty's aforesaid colony; and His Majesty's Governor having, in the name of the King his Master, granted the said prayer, these articles of treaty are hereby mutually agreed on between the aforesaid contracting parties, and are concluded and ratified accordingly, in the manner and terms following:—

1. The aforesaid chiefs and representatives, Macomo, Tyalie,

¹ The Gaikas were one, the T'Slambies or Ndhlabis the other, of the two great branches into which the Rarabe tribe had split. The split was due to the fact that when the minority of Gaika, the son of the 'great son' of Rarabe, came to an end some forty years before, Ndhlabi, who was a shrewd and able chief, was not prepared merely to play second fiddle to his feebler nephew. Both chiefs had died in 1829. The two tribes lived between the Amatola Mountains and the sea, the Ndhlabis being nearer the coast.

² The Province of Queen Adelaide was the name given by D'Urban to the annexed territory between the Keiskamma and Tyumie on the west and the Kei on the east.

Kusia, Eno and Fadani, all of them, in the name of the whole tribe, its connexions and dependents, and each for himself and the branch or family of it which he individually represents, separately and solemnly promise and engage to bear true allegiance to, and to be faithful subjects of, His Majesty the King of England; to be friends to His Majesty's friends, and enemies to his enemies; to obey the commands of His Majesty's Governor, and the duly constituted colonial authorities, and to live in submission to the general laws of the colony. The Governor and the laws at the same time extending to them the same protection and security as to the other subjects of His Majesty.

2. To the penalties of these laws, the above chiefs and representatives, as aforesaid, their tribe and families, hereby alike become amenable if they break them; and they must be aware that these laws inflict severe punishments, and even death itself, upon those who commit the crimes of treason, viz. rebellion, or taking up arms against the King or the government of the colony; murder; rape; setting houses or property on fire; theft, whether of horses, cattle, sheep, goats or other property. And such penalties will be equally incurred, if they be committed by any members of the above tribes or families against each other, as if committed against other inhabitants of the colony.

And they will also especially take notice and be aware, that the Fingoe nation, having already become subjects of the King of England, any offence against the persons or property of the Fingoes will incur the penalties of the laws, and be severely visited upon all such offenders.

And the aforesaid chiefs and representatives are also made aware, that any proceedings on their part, or on the part of any of their tribe or families, as aforesaid, against any one, whether within or without their tribe, for the pretended offence of witchcraft, are peremptorily forbidden by the above-cited laws, and will be severely punished accordingly.

At the same time the aforesaid chiefs and representatives understand, and it is a part of this treaty, that the said English laws do not apply, and will not be applied to or interfere with the domestic and internal regulations of their tribe and families, nor with their customs, in so far as these do not involve a breach of the above-cited laws.

3. And the aforesaid chiefs and representatives hereby promise and engage to send out immediately positive orders, and to cause them to be instantly and duly obeyed, for the recal of all parties of their respective families and dependents now employed in predatory inroads upon the colony, and to prevent all such predatory incursions for the future.

4. And the aforesaid chiefs and representatives hereby promise

and engage to deliver up without delay, into the hands of Colonel Smith, commanding His Britannic Majesty's troops in the Province of Queen Adelaide, or to any officers whom he may appoint to receive them, all the muskets which may be in their possession.

5. All the above well understood and performed, the Governor, upon his part, in the name of His Majesty, promises to afford in favour of the aforesaid chiefs and representatives, their tribe and families, all due protection and support for the maintenance of their rights, their property, their security and welfare, equally with the other subjects of His Majesty.

6. And the Governor, yielding to the earnest supplications of the aforesaid chiefs and representatives, 'that they may not be expelled from their native country,' and in the hope that they may for the future, as they have solemnly promised, keep peace and good order within, and abstain from all inroads and robberies without, their allotted boundary, hereby assigns to each of them and their respective families, a fair and adequate proportion, according to the amount of population of each family, to be determined by the commissioners hereinafter set forth, for their location, establishment and regulation, of a tract of country bounded as follows:—

On the west, from the Enweleni to the Iqirikazi, and thence along the mountain to the source of the Chumie River; thence down the left bank of the Chumie to its confluence with the Keishkamma; thence up the right bank of the Keishkamma to its confluence with the Deba; thence up the right bank of the latter to the Deba Neck; thence, within (to the north of) the road to the Mission Station of Pirrie; thence to the summit of the hill called Isidenge; thence down the left bank of the Kabousie River to the Kye; with the reservation of such spots and lines for roads, out-span places, places of public worship, schools, magistracies, military stations and other public services, as the Governor may from time to time find it necessary to occupy, as well for the general benefit of the colony, as for the particular benefit of the aforesaid chiefs, their tribes and families.

And reserving also a due and proper location, with adequate lands, to be determined by the aforesaid commissioners, at and about Burn's Hill, for Suta and Sandili and their family, and also a similar location and lands and about the Chumie Mission Station, for Matua and Tinta, and their families.

7. And each of the above chiefs shall, in token of fealty to the King of England, and of acknowledgement of holding his lands under His Majesty's Sovereignty, cause to be delivered to such officer or officers as the Governor shall appoint on behalf of His Majesty, one fat ox, in the course of the first month of every year; in the failure of which condition, he will forfeit his said lands, unless they be granted anew by the Governor in the name of His Majesty.

8. Ministers of the Gospel, schoolmasters, and, where necessary,

English magistrates or residents, will be duly appointed within the above locations. And it is hereby concluded and agreed on by the said chiefs and representatives, that they and the heads of families shall act as magistrates of the colony, each in his location, if required to do so by the Governor, and under such titles, and to obey such instructions as shall by him be determined; and that they shall not harbour, nor suffer to be harboured within their respective locations, any person or persons, whether of their own tribe or of others, whether English, Hottentots, Boers, or of any other nation, suspected or known to have been guilty of any crime or offence against the colony, but shall immediately secure and deliver up any such person or persons to the nearest colonial authorities.

9. And it is hereby further concluded and agreed on by the aforesaid chiefs and representatives, and they alike promise and engage, that they shall, without delay, communicate to the colonial authorities any overtures made, or which may hereafter at any time be made to them, from any person or persons, whether within or without the colony, tending to its prejudice or danger, and shall equally communicate in like manner any intelligence which may at any time come to their knowledge, of danger threatening the colony, from whatever quarter.

10. And it is hereby further concluded and agreed on by the aforesaid chiefs and representatives, that they and the heads of families in their respective locations, shall all and each of them prevent by every means within their power, inroads into the colony of robbers to steal cattle or other property; and shall, moreover, in the case of any cattle or property so stolen being brought into their respective locations, secure and deliver it to the nearest colonial authorities; well understood, that the Governor will justly hold that chief responsible for restoring colonial cattle or other property, into whose location it shall have been traced.

11. The Governor having appointed a commission consisting of 1, The Hon. Colonel Smith, C.B., Chief Commissioner; 2, Lieutenant-colonel England, 75th Regiment; 3, The Rev. W. Chalmers, Glasgow Mission; and 4, Captain Stretch, Provisional Companies, 75th Regiment, for the location, establishment and regulation of the aforesaid chiefs, tribe and families; the said commissioners (or a majority of them) are hereby duly authorized, so soon as they shall be reasonably satisfied that the 3d and 4th conditions of this treaty have been fairly complied with, to conclude and ratify it finally by their signatures, and to receive and record by endorsement upon this document, the accession and agreement of the aforesaid chiefs and representatives thereto; and thereafter to locate and place each in possession of his allotted location, and within his appropriate boundary accordingly.

12. When all the above arrangements shall have been duly carried into effect, the Governor will appoint an agent for the government, to

reside among or near to the locations; with whom the chiefs will communicate whenever they may desire to, for the information of the Governor, of whose communications to them he will also be the accredited organ.

13. For the present, and until the Governor may judge it safe and beneficial, as well for the old colonists as for these His Majesty's new subjects, hereby admitted under the protection of His Majesty's Government, none of these last, whether of the family of Gaika, or its connexions or dependents as aforesaid, can be allowed to cross the Chumie, or the Keishkamma River below its confluence with the former, or by any other way to enter the old colonial border without a pass signed by one of the above commissioners, or by the agent when he shall have been appointed; and even in that case all persons so passing the boundary must be unarmed; a departure from this condition will expose the individuals infringing it to be shot, and its observance is therefore very strictly and earnestly enjoined.

Given under my hand and seal, at Fort Willshire, this 17th day of September 1835.

(signed)

B. D'URBAN, Governor,
And Commander-in-Chief of the Colony of the
Cape of Good Hope.

4

DESPATCH FROM GLENELG TO D'URBAN, December 26,
1835 [EXTRACTS]

(P.P., 1836, xxxix.)

The reasons to which I have already adverted, compel me to state merely the result of my inquiries into the origin of the Caffre invasion, unsupported by the evidence on which I rely. The conclusion, though exhibited in a few general terms, is the fruit of a long and extensive investigation. I abide by it with the greater confidence, because it has been forced upon me by proofs, of which I would gladly have resisted the pressure. But yielding to the conviction which has thus been impressed on my mind, I am constrained to admit, that in the conduct which was pursued towards the Caffre nation by the colonists, and the public authorities of the colony, through a long series of years, and which the short period of your administration could not have enabled you to correct, the Caffres had an ample justification of the war into which they rushed with such fatal imprudence at the close of last year. This justification rests on two distinct grounds.

First, The Caffres had to resent, and endeavoured justly though impotently to avenge, a series of encroachments upon them, which had terminated in the assumption by Great Britain, first, of the

dominion, and then of the exclusive possession, of all the country between the Great Fish River and the Keishkamma. To effect this object, we commenced by ascribing to the chieftain Gaika an authority which he did not possess, and then proceeded to punish him and his tribes because he failed to exercise that imaginary power for our benefit. We held him responsible for the acts of his and our own common enemy, and exacted from him and his people a forfeiture of their lands, as a penalty for the retaliation made by the chief Slambie, after the invasion of his country by Gaika and ourselves. We forced on our ally a treaty,¹ which, according to the usages of the Caffre nation, he had no authority to conclude, and proceeding on that treaty, we ejected the other Caffre chiefs, who were no parties to it, from their country. The compact thus made was on our side repeatedly infringed. Of the country of which the dominion was acquired in order that it might be placed as a barrier between the two nations, and which, with that avowed object, had been especially devoted to be thenceforward a neutral and uncultivated waste, extensive tracts were speedily occupied, partly by British, and partly by Hottentot settlements. The Caffres, imitating our example, endeavoured to resume the possession of some part of their lost country. They were at times driven back at the point of the bayonet, and either shot or flogged, if captured to the westward of the Keishkamma. At other times, their residence within that frontier was permitted if not encouraged. But as often as the fluctuating policy of the colonial government led to the disapproval of this indulgence, they were again driven back in large bodies into their remaining lands, with all the rigour of military execution against their persons and property. Harassed by this long series of aggressions, and the victims of successive changes in the opinions and conduct of the local authorities, the immediate motives of their invasion in December 1834 would seem not very difficult to be discovered. In the Appendix to your Despatch of the 19th of June you state, 'the avowed object of the savages in their present invasion, is the extension of their territory, or in other words, the recovery of a tract of country from which similar atrocities to those they are now committing compelled the colonial government to remove them, and which was afterwards formally ceded to us by treaty.' Dissenting from the accuracy of the impressions which you have received respecting the cause of the expulsion of the Caffres from their former possessions, and unable as I am to attach any authority to the treaty to which you here refer, I yet deduce from this passage a clear confirmation of the opinion maintained by almost every other witness on the subject, that the

¹ This treaty, which was in reality verbal and quite informal, was made with Gaika as paramount chief of the Rarabes by Lord Charles Somerset in 1819. Its principal feature was the establishment of the 'neutral territory' between the colonial boundary (the Great Fish River) and the Keiskamma to which the despatch goes on to refer. It was, of course, a failure.

Caffres were stimulated to this war by the belief that they had been unjustly despoiled of their country, and by the hope of regaining possession of it. I am compelled to conclude, that they wanted nothing to the completeness of this right, except the power to render their assertion of it effectual.

2dly. The next cause of war which the advocates of the Caffres have alleged in their defence, is, that the tribes were, for a long series of years, harassed by incursions into their country, which, though conducted under the express sanction and guidance of the authorities, civil and military, of the frontier districts, were yet, it is said, attended by a long series of acts of injustice and spoliation in the highest degree indefensible. On the part of the colonists are alleged the predatory character and habits of their neighbours, and the right, or rather the duty, of retaliation for robberies committed upon the defenceless farmers and other inhabitants of the districts of Albany and Somerset.

It is evidently impossible to weave into any one connected history the long catalogue of these border forays: nor would such a narration, if it could be compiled, answer any useful purpose. But throughout the whole of these incidents, the mode of proceeding against the Caffres for the restitution of stolen cattle, was one which it is impossible to condemn too strongly as unjust, or to lament too deeply as productive of calamitous results.

It is established beyond all possibility of contradiction or doubt, that for a series of years immediately preceding the invasion of 1834, the practice on our frontier districts was as follows: A farmer who had lost, or who thought proper to allege that he had lost, any of his cattle, preferred his complaint either to the field-cornet or to the military commandant of his district. Without further evidence or investigation, either into the reality of the loss or into the causes which might have produced it, a military force, with the complainant for the guide, entered the Caffre country. Following up any tracks which he might, with whatever truth or falsehood, point out as the traces of his own cattle, they advanced to the first kraal or village to which these marks conducted them. There, without further inquiry, they demanded restitution. Innocence of the theft was not admitted by the commanders of these parties as any defence against these demands. Whoever might have been the real authors of the wrong, the inhabitants of the kraal were required to compensate the loss, whether real or pretended, of the complainant, for no better or other reason, than that he chose to ascribe to the tread of his lost cattle the marks which had been traced from the borders of the colony to that particular kraal. It was to no purpose to allege that these were the traces of other cattle, or that the real robbers had driven the cattle into the neighbourhood of the kraal to excite an unfounded suspicion against its inhabitants. Utterly regardless of these and all other grounds of vindication, the commanding officer, in the regular

discharge of the duty assigned to him, enforced immediate reprisals against the kraal, driving away the cattle, and, in the event of resistance, proceeding to whatever extremities he might find or suppose necessary; extending in many cases to the burning the huts and the firing upon the inhabitants.

The injustice of such proceedings of course requires no proof. Their disastrous results are scarcely less evident. The Caffres were unavoidably converted by them into a nation of depredators. The inhabitants of the pillaged kraal had before them the alternative of perishing for want, or of imitating the conduct of their aggressors, by retaliating upon the nearest proprietor of cattle whom they could surprise or overpower. Thus the predatory spirit was incessantly receiving new force and renewed apologies for its indulgence. Insecurity, depravity of manners, and social wretchedness, were diffused throughout our whole vicinity; and our own people, though not the only victims, were necessarily amongst the chief sufferers, from the maxims which we had established and the conduct we had pursued.

If this practice of punishing the innocent for the guilty, and of assuming the existence of guilt on the bare assertion of the interested party, had occurred in insulated cases only, or at a remote time, or had been the unauthorized act of individual wrongdoers, the injuries of which the Caffre nation had to complain might not perhaps have afforded them a legitimate cause of war. But this system of reprisals appears to have been the established usage of the colonists, under the direct sanction, and with the constant co-operation, of the officers of government on the frontier. It was pursued from year to year, even down to the very close of the year 1834. I have before me the evidence of eye-witnesses whose statements in this respect derive strong incidental confirmation from the official reports which you have transmitted, and who assert that at the eve of the invasion they saw the kraals burning and the Caffre chiefs lamenting with bitterness of heart the injuries which they had sustained by the punishment of their defenceless and unoffending people for the imputed robberies of their fellow countrymen. At the very same time I find that the principle of punishing resistance to our patrols, by firing on the Caffres who might venture to defend their own property, was acted upon in such a manner, that two of the native chiefs were wounded.¹ And yet it is well known that the national affection for the chiefs is such, that an injury offered to their persons, even in war, is regarded in the light of a profanation. Of course I do not mean to assert that our troops when engaged in open hostilities with the tribes were

¹ One petty chief, Xoxo, a brother of Tyali, was slightly wounded in an encounter between a frontier patrol and a body of Kaffirs, but there is no reference in the official accounts to the wounding of any other chief, and D'Urban pointed this out in his reply.

bound to adopt their maxims, or even to respect their feelings with regard to the chiefs; I refer to those feelings only as contributing to explain the intensity of the sense of injury, and the blind thirst for revenge which the Caffres so speedily manifested.

With such facts before me, I cannot refuse to the Caffres the benefit of this second apology for their irruption into the colony. They may indeed have been, nor can I doubt that they were, accustomed to harass the inhabitants with their depredations. But driven as they had been from their ancient and lawful possessions, confined within a comparatively narrow space, where pasturage for their cattle could not be readily found, and urged to revenge and desperation by the systematic injustice of which they had been the victims, I am compelled to embrace, however reluctantly, the conclusion, that they had a perfect right to hazard the experiment, however hopeless, of extorting by force that redress which they could not expect otherwise to obtain. . . .

I find, however, both in the proclamation which you published at Graham's Town, and in your despatches to me, expressions, of which it is the object to show that the total and incurable depravity of the Caffres is such as to place them, not only beyond the pale of civilized society, but even beyond the range of those principles which regulate the hostilities of more cultivated nations. From this representation it would seem to follow, that in the case of such enemies there is no room for those anxious deliberations, in which I have thought myself bound to engage, respecting the justice of the cause of war. In your proclamation of the 10th of May, you denounce these people as 'irreclaimable savages;' and in your despatch of the 19th of June, you observe, that the Hottentots and Fingoes 'not at all inaptly compare the Caffres to wolves, which in truth they resemble very much, which, if they be caught young, may be brought, for their own interest and gratification in the matter, to an appearance of tameness, but which invariably throw it off and appear in all their native fierceness of the woods, so soon as the temptation of blood and ravage, which never fails to elicit their natural fierceness, presents itself to their instinctive thirst for it.'

It would be difficult for me to describe the pain which I have read and have laid before His Majesty the preceding passage. I am well aware with what prompt and earnest humanity you applied your mind, shortly after your arrival in the colony, to the improvement of the social condition of the Caffres; and I would venture to refer the views and feelings expressed in the words which I have quoted, to the passing excitement of the hostilities in which you were engaged. You will, I am sure, concur with me cordially in reprobating the practical consequences which in so many regions of the globe have been enforced and palliated, if not directly justified, by similar reproaches cast indiscriminately on the uncivilized men with whom

the natives of Europe, or their descendants, have been brought into contact. Having classed their fellow-creatures among the wild beasts of the forest, these claimants to the exclusive title of human beings have found little difficulty in defending, at least to their own satisfaction, whatever measures were necessary for the subjugation or destruction of the common enemy. Abhorrent as such conduct is from your own temper and character, I must express my regret that you should, even through inadvertence, have given any countenance to it by the employment of the terms alluded to; terms not used in any careless discourse, or hasty writing, but in a despatch addressed to His Majesty's Government for their guidance on a practical question of the utmost importance and difficulty.

I am further constrained to record my dissent from the unfavourable estimate which you have formed of the Caffre character. Referring to the great mass of evidence which it has been my duty to examine, I find it replete with proofs of a directly opposite tendency. I learn that amongst this proscribed race, Christian missionaries have passed many years respected, honoured and secure. It is placed beyond dispute that at the very moment when the countrymen of those missionaries were harassing Caffreland with incessant patrols and commandoes, the teachers of religion, relying implicitly on the honour and good faith of the tribes, continued to receive kindness and protection.

In the midst of all the calamities incident to their situation in our immediate neighbourhood, the Caffres, under the guidance of their Christian ministers, have built places of public worship; have formed various congregations of proselytes, or of learners; have erected school-houses, and sent their children thither for instruction. In the meanwhile no inconsiderable advance has been made in agriculture and in commerce. A trade, variously estimated, but not amounting to less than 30,000*l.* per annum in the purchase of European commodities, had been established on the frontier, and as many as 200 British traders were living far beyond the boundaries of the colony, protected only by the integrity and humanity of the uncivilized natives.

To such a people the character of 'irreclaimable savages' cannot with justice be assigned. Nor indeed, even if well founded, would this reproach come with a good grace from us, unless it can be asserted that we have, as a Government, fairly brought to the test of experiment whether they can or cannot be reclaimed. . . .

The general principles by which the British policy towards the Aborigines of Southern Africa should be governed, are obvious, and beyond the reach of doubt. The extension of His Majesty's dominions in that quarter of the globe, by conquest or cession, is diligently and anxiously to be avoided. Hostilities with the tribes in our vicinity may occasionally be inevitable for the protection of

the King's subjects; but on every other ground they cannot too earnestly be deprecated. In our relations with those tribes, it yet remains to try the efficacy of a systematic and persevering adherence to justice, conciliation, forbearance, and the honest arts by which civilization may be advanced, and Christianity diffused amongst them; and such a system must be immediately established and rigidly enforced.

Thus far I am persuaded of your entire concurrence in the views of His Majesty's Government. The very short period of your administration before the irruption of the Caffres had not passed without manifesting the desire of the colonial government to act upon those views in their intercourse with the border tribes. But although we are thus agreed as to principles, yet when I proceed to reduce them to a specific form, and to pursue them into those practical consequences which they seem to me to involve, a very material difference of opinion may perhaps arise between us. It is possible that you may be in possession of facts of which I am ignorant, the knowledge of which would have irresistibly dissuaded the adoption of some of those measures which I am about to explain. You may have it in your power to convince me that some of the premises upon which I have been compelled to reason are so entirely mistaken, or fallacious, as not to support my practical deductions from them. Conscious of those sources of error which are always open to persons reasoning at so great a distance from the scene of action, and to which I am on the present occasion so peculiarly liable, I cannot, I repeat, hazard the experiment of laying upon you peremptory and inflexible injunctions for your guidance in those affairs. In explaining the course which His Majesty's Government propose to take, I shall proceed on the assumption that I do not labour under any such cardinal error respecting the facts of the case as would refute my conclusions. If, however, in the exercise of your deliberate judgment, and availing yourself of your peculiar means of knowledge, you shall be clearly persuaded that I have fallen into any such misapprehensions, it will become your duty to assume to yourself the responsibility of suspending, until further directions, the execution of any part of the following instructions, which you may be convinced had its origin in any such misconception.

For the purpose of perspicuity I shall endeavour to separate from each other, and to arrange in order, the various practical questions which offer themselves, so far as they at present require or admit of a solution.

First, For the reasons already given, I cannot admit that the British sovereignty over the country between the Fish River and the Keiskamma rests on any solid foundation of international law or justice; yet the relinquishment of that dominion is surrounded by difficulties so many and inextricable as entirely to forbid such a surrender. It is

needless to enumerate or to describe these impediments. The restitution of invaded rights in this, as in many other cases, would involve injuries more formidable than it could remedy.

Secondly, The claim of sovereignty over the new province, bounded by the Keishkamma and the Kye, must be renounced.¹ It rests upon a conquest resulting from a war, in which, as far as I am at present enabled to judge, the original justice is on the side of the conquered, not of the victorious party. Even if there were the most powerful motives of apparent expediency to recommend this extension of His Majesty's dominions, which I cannot allow, yet His Majesty would never consent to consult expediency at the expense of justice. You will, therefore, prepare the public mind in the Cape colony for the relinquishment of the newly acquired province, by announcing that the British occupation of it is temporary and provisional only, and will be resigned by the end of the year 1836. I fix that date, as it will afford a sufficient interval for making those arrangements which will be necessary to enable the colony to recede with safety from the limits assigned to it by your proclamation.

I place this resolution on the ground of justice, because I should be most unwilling to appear to act on such an occasion on any subordinate motive. But if the conquest could be maintained with indisputable right, I should hold the impolicy of abiding by it equally clear. In this I have the misfortune to differ from you, and I must, therefore, distinctly explain the grounds of that difference.

You state that this accession of territory will be some indemnity against the expenses of the war. To the assumption involved in this statement, that an enlargement of the British dominion in Southern Africa is a national advantage, I feel myself unable to assent. The territory of the Caffres, I am well aware, is in itself a fertile and salubrious region, contrasting but too favourably with the prevailing sterility of our own possessions. But the great evil of the Cape colony consists in its magnitude; in the vast space for which it encroaches upon the continent, and the consequent extent of its boundary. We are thus brought into contact with tribes numerous and warlike, and a scale of establishment is required, both civil and military, extensive beyond all proportion to the number and wealth of the inhabitants. In a country containing more square miles than the whole of the British Islands, we have a population of about 150,000 souls. To connect these dispersed settlers by roads, and other communications, to bring them under the protection of magistrates and officers of police, to afford them the benefit of prompt administration of justice, and to shield them by military defence, are duties incumbent on the Government, but duties which cannot be

¹ The Melbourne Government found it no easy matter to get the assent of William IV to this retrocession of territory. According to Lord Howick's Journal it was largely due to his insistence that the Cabinet refrained from yielding the point.

performed without imposts so heavy as to excite universal and apparently just complaints, and which, even with such imposts, have never been performed but most defectively. Whence the necessary revenues for defraying the additional establishments, civil and military, are to be extracted, is a question to which your consideration does not appear to have yet been given, and to which I have directed my own in vain.

But it is said that the defence of the new frontier will be more economical than that of the Keishkamma. Much as I am disposed to rely upon your professional judgment, I must own that upon that point I feel no little hesitation in acquiescing in the accuracy of your calculations. I shall not scruple to explain unreservedly the nature of my difficulties, convinced that you will estimate them with candour, and that you will afford me the benefit of your experience and professional skill for the more full elucidation of the subject.

It is evident that the new frontier, being much more distant, is therefore less accessible from the interior than the old. It embraces a larger area, and would therefore seem to demand a longer line of defences. In the absence of any exact military survey of both, the general presumption must seem to be, that in proportion as the frontier is protracted it becomes more readily assailable. Pushing further forward into Africa, the new line of defences would bring us into contact with new tribes of uncivilized men. Amongst these the exiled Caffres must be received as intruders, and will form a band of desperate adventurers, at one time seeking subsistence by plunder in the colony, at another provoking war on its borders. Thus we shall again be brought into contact on a new line with African warfare in all its ferocity. New enemies will be acquired; new conquests must be achieved; a new frontier must be sought, and we should be engaged in a series of contests desolating to Africa and ruinous to ourselves. It would be a melancholy acquisition to exchange the neighbourhood of men who have been taught to fear our power, and in some degree to practice our social arts, and to adopt our religion, for that of fresh hordes of barbarians, who, however inaccessible to the arts of peace, may yet prove no unapt scholars under our tuition in the art of war. Nor is it possible to contemplate without emotion, the extinction of the churches which had been planted in Africa, and of the prospects of diffusing Christianity and the other blessings of civilized life in that portion of the globe.

You state, however, that for the defence of the Keishkamma frontier, the regular troops must be augmented to about 3,000 rank and file, while the increase might be considerably less if the Kye be taken as the boundary.

Now, even if on a careful and complete survey it should be established, in a military sense, that the Kye is a better boundary than the Keishkamma, still this argument of comparative ease and cheapness

of defence may be open to question. Of two lines of defence, the one may by nature be stronger than the other, and consequently, if regarded simply in that view, without reference to other circumstances, may be pronounced the less expensive. But other circumstances may far more than counterbalance the difference. If the stronger frontier comprehend the larger extent of territory; if it be the more remote from the main strength and body of the colony; more remote from the resources on which it must in case of attack rely for supplies of all kinds; for men, for provisions, for munitions of war; if in all these respects, therefore, it be in fact the weaker of the two, and if at the same time it be more exposed to attack; if, for example, it should gather and dam up along its whole line a raging mass of savages, tormented by the narrowness of their limits, by famine, and by revenge, and threatening every moment to break over the mound; if these should be the relative circumstances of the two defences, it is very easy to perceive, that with all its natural advantages, the stronger may at the same time prove not only the more costly, but also the more difficult to maintain, and, therefore, be less secure. In truth, however, this argument of comparative expense proceeds on the assumption that the security of the colony can be assured only by having a force of regular troops, numerically large enough to man the whole frontier. But this, whatever line of defence be chosen, is obviously impossible. The army of England would not suffice to man, in the proper sense of the word, our colonial frontier from sea to sea. For the defence of such a frontier some regular troops are necessary, and the number already supplied is probably all that in justice to the people of this country, and to the great demands of the empire, ought to be allowed for that object. The further military defence must be sought in the enrolment of a local militia force. But even this force in its best state, and in conjunction with a sufficient number of regulars, can never be our exclusive reliance. The surest of all defences, or rather the only sure defence, is to be found in a wise system of border policy. Without this the strongest frontier that nature or art can supply is miserably weak, and with it the Keish-kamma is as secure as the Kye. It cannot be too often or too importunately pressed on our conviction as a plain practical truth, that the safety of the colony, which after all is the first object, is to be derived from observing in our dealings with the frontier tribes the most rigid justice, respect for their feelings and prejudices, regard for their real interests, conciliatory kindness when it can be properly shown, and above all, an unwearied anxiety to diffuse among them the blessings of education and of Christian knowledge. Colonies which it is attempted to maintain in the neighbourhood of savage tribes on any other principles, must either be destroyed by that vicinity, or be upheld at a cost utterly disproportionate to their real value.

It remains to consider what course is to be pursued towards the people with whom we have been brought into contact. And first, in reference to the Fingoes:

I must frankly confess, that I am quite unable to perceive the slightest accuracy in the comparison which you have instituted between the liberation of these people and the great national act of negro emancipation. In the one case we liberated the slaves of our enemies at the cost of their owners, in the other case we liberated the slaves of British subjects at the cost of the national revenue. Still the act having been done, is irreversible. To replace the Fingoes in the state of slavery from which we have rescued them, would be an act altogether indefensible. These persons must, therefore, be settled under British protection, on lands to be assigned for their maintenance. The territory which would appear best adapted for this purpose, is that to the westward of the Keishkamma, from which the Caffres were expelled.

With regard to the tribes which were driven from those lands, and to those against which our hostilities had been waged, His Majesty's Government cannot think it consistent either with justice or with sound policy, that they should be exiled from their ancient possessions between the Kye and the Keishkamma.

The restoration of the Caffres to the conquered territory must, however, be accompanied and preceded by such arrangements as will assign to each tribe its own proper limits.

For the due regulation of the future relations between the Caffre tribes and the colonists, as well as for other purposes of local convenience, His Majesty proposes immediately to appoint a lieutenant-governor of the eastern districts of the colony.¹ On the lieutenant-governor will be devolved the administration of the executive government within the boundaries to be assigned to his command. It is further proposed to appoint a civil commissioner, or protector of the native tribes, who shall reside within the colony, probably at the seat of the lieutenant-governor's residence. To this officer will be entrusted the duty of protecting the borderers on either side against mutual aggressions. It will be his office to inform himself of every inroad and act of plunder committed against the colonists, and of every

¹ Captain (afterwards Sir) Andries Stockenstrom was appointed Lieutenant-Governor. He was of Swedish descent and had been 'landdrost' or district magistrate of Graaff Reinet and later, as Commissioner-General of the Eastern District, the principal civil officer of the frontier region. He had retired in 1833, owing to his inability to work with Sir L. Cole. The evidence he gave before the Aborigines Committee in 1835-6 on frontier conditions, however, excited the indignation of the colonists to such an extent as to make him a very unsuitable man for his new post, and in 1839 it was deemed advisable to remove him. It is curious to find him, after the passions of these years had to some extent subsided, commanding the burgher forces in the field in the Kaffir War of 1846 and taking the lead in the agitation for a liberal constitution in 1850-1. He was undoubtedly a man of ability, but he was always nursing a grievance, and was violent in his language and arbitrary in his methods.

outrage or injury offered to the Caffres; to investigate the truth of every allegation of that nature; to report all such occurrences to the lieutenant-governor; and to superintend in person the execution of all measures which may be necessary for obtaining redress; and to take charge of all cases in which the subjects of native chiefs are brought before the colonial courts of justice. It is also intended to appoint a government agent to reside in Caffreland, with the requisite powers to make him an efficient guardian over the rights as well of the natives as of European traders.

All communications with the Caffres on what, in the absence of a more simple word, may be termed international subjects, must be carried on through the government agent for Caffreland.

The following is a statement of the principal rules which it is intended to prescribe to the lieutenant-governor and civil commissioner, for the guidance of their conduct.

1. A treaty, fixing the boundaries of the colonies, must be made in writing, in English and in the Caffre language, and, being explained to each border chief, must be signed or attested by each. Copies of this treaty must be delivered to each of the contracting chiefs.

2. A separate treaty must be made, in the English and in the Native languages, with the chief of every tribe to which a portion of territory is assigned within the British dominions; defining the limits of his allocation, the degree of his responsibility, and the nature of his relations with the British Government; and all other particulars admitting of specification. A copy of this treaty in the native tongue must be preserved by the chief.

3. A separate treaty must be made in the Native and English languages with the chief of every tribe in alliance with us, or in any degree under our protection; defining also in each case all that can be specified in such an instrument. A copy of the treaty must be preserved by each chief.

4. The rules of mutual restitution, and those which relate to the prevention of inroads, and the redress of the injury occasioned by them, must be particularized in each of the above treaties.

5. The responsibility of particular kraals, or villages, for the acts of individual Caffres, must no longer be enforced. But

6. The chiefs must be called upon to bind themselves to make restitution for plundered cattle, on sufficient proof of the reality of the theft. They must be left to detect the offenders, or to indemnify themselves at the expense of the tribe collectively for such losses as they may sustain by being required to make these compensations. In other words, we must look to the chiefs, and to them alone, and must no longer take upon ourselves to make reprisals upon the people. The chiefs to enter into securities, or pledges, of such a nature as may be deemed sufficient, and not inconvenient for the due fulfilment of these stipulations.

7. Fairs for the interchange of commodities should be re-established at convenient places on the frontier.

8. The wounding or killing a Caffre, or otherwise injuring his person or property, will be made liable to the same punishment as if the sufferer were one of His Majesty's subjects. This of course would not apply to times of actual war, nor prevent the compulsory removal back into their own territory of any Caffres who might re-appear within the boundaries with purposes apparently hostile or fraudulent, or in opposition to any existing laws. No violence must, however, be used in effecting their removal, which is not strictly required by the necessity of the case, and for the effective execution of the service.

9. No European or Hottentot, or any others but Caffres, to be located or allowed to settle east of the Great Fish River. Those Hottentots who were placed in the ceded territory prior to the late war, and all Christian teachers, are exempted from this rule. I may observe here, that in the above rules, under the general name of Caffres, I include the Fingoes.

In aid of these general rules, it is proposed to submit, for the approbation of Parliament, a law to enable our colonial tribunals to take cognizance of and to punish offences committed by British subjects within the Caffre territory, in the same manner as if they had been perpetrated within the limits of the colony itself.

I have thus indicated in general terms the measures which it is proposed to adopt, and which are of course liable to be altered or modified on further consideration. The lieutenant-governor will also be the bearer of instructions defining the relative authority and duties of himself and of the governor of the colony. I therefore abstain from enlarging at present on those topics.

Throughout this despatch I have proceeded on the supposition that the war has been brought to a termination. Your despatch of the 19th of June would appear to encourage and justify that hope, although I perceive with deep concern, from the public journals of the colony, as well as from the private letters which have reached this country, that so lately as September last your military operations were not concluded, and that you were still on the frontier; that the Caffres were pushing their depredations with increasing boldness into the colony, and even to the neighbourhood of Graham's Town. Of course it is impossible to address to you any definite instructions for your conduct in contingencies respecting which I can form only a doubtful and uncertain conjecture. But you will receive as a most decided and positive injunction the directions which I now convey to you, to bring these hostilities to a conclusion by the earliest possible period. They must not be protracted for a single day with a view to revenge or conquest. The safety of His Majesty's subjects in the districts of Somerset and Albany is the single legitimate object with

which such a contest can be carried on at all, and that object once attained, it must be immediately terminated. To maintain a considerable army for any other object, and to incur the enormous expense connected with its maintenance, is a proceeding to which the Parliament and People of this kingdom could never be reconciled. The utmost possible benefit to be obtained is insignificant when contrasted with such an outlay of the national resources at a moment when the strongest necessity exists for carrying an enlightened but strict economy into every part of the public service.

The loss of money, however serious, as on every account it is, would yet be the least of the causes of that regret with which the people of Great Britain would be affected by the continuation of these hostilities. It is a melancholy and humiliating but an indisputable truth, that the contiguity of the subjects of the nations of Christendom with uncivilized tribes has invariably produced the wretchedness and decay, and not seldom the utter extermination, of the weaker party. This uniform result must be attributed, not to any necessary cause, but to the sinister influence of those evil passions which in such circumstances find but too much to provoke, and too little to restrain them. Of all the chapters in the history of mankind, this is perhaps the most degrading. Nor is there any one great course of events on which every humane mind dwells with such settled aversion and shame, as on that which records the intercourse between the Christian States of Europe and the heathen nations of America and Africa. I know not that a greater real calamity could befall Great Britain than that of adding Southern Africa to the list of the regions which have seen their aboriginal inhabitants disappear under the withering influence of European neighbourhood. It is indeed a calamity reducible to no certain standard or positive measurement, but it involves whatever is most to be dreaded, in bringing upon ourselves at once the reproaches of mankind and the weight of national guilt. I do not say nor mean to imply, that those fearful desolations which Colonel Smith's letters record are justly liable to this censure: but thinking that we were the real aggressors, not indeed in the actual warfare, yet in the series of events by which it was preceded and provoked, I feel that if it be continued for a day or an hour longer than the necessity of self-defence plainly requires, we shall not be able to rescue ourselves from the reproach of having exerted our superiority needlessly and unjustly to crush a people, whose impotent resistance leaves room for no feelings but those of compassion.

These views I am well assured will be partaken by the generous, humane and Christian people over whom it is His Majesty's glory and happiness to reign. Sympathizing with every just and honourable sentiment of the subjects of the British Crown, His Majesty has commanded me to express his solicitude for the protection of the Aborigines of Southern Africa, and his repugnance to sanction any

enlargement of his dominions of which their sufferings would be the price. You are aware that in the session of Parliament of 1834, the House of Commons especially invoked His Majesty's protection for these defenceless people,¹ and received from the King an assurance of His Majesty's determination to act in this respect in accordance to their wishes. In the spirit of that assurance I am commanded to issue these instructions; nor will His Majesty regard his pledge as redeemed until he can present to his people the proofs of the establishment of a system of border policy advantageous alike for the Caffres and for the colony.

I am persuaded that your sentiments fully concur with my own on the general principle on which these instructions are founded; and it affords me much gratification to know, that as you have been called to the discharge of severe and unwelcome duties, so now the more agreeable task will devolve upon you of carrying into effect His Majesty's gracious intentions, which I have the honour of communicating to you in this despatch.

It only remains for me to state, that His Majesty's Government will await with solicitude the report which you will transmit to me in answer to this despatch. That report will, I have no doubt, contain as full an explanation as you can supply on every topic on which I have stated doubts and difficulties. After a deliberate consideration of it, His Majesty's Government hope to be able to issue their final instructions.

I have, &c.

(signed) GLENELG.

5

TREATY WITH THE GAIKA TRIBE (December 5, 1836) [EXTRACTS]

(P.P., 1851, xxxviii.)

TREATY entered into between Andries Stockenström, Esquire, Lieutenant-governor of the Eastern Division of the Colony of the Cape of Good Hope, on the part of His Britannic Majesty, and the Kafir Chiefs of the Tribe of Gaika, viz., Sandili (represented by his Mother Sutu), Macomo, Tyali, Botma and Enno, for themselves and the said Tribe; when, after several preliminary discussions on various occasions, and the fullest explanations, by means of the official Interpreter, Mr. Theophilus Shepstone,² assisted by Interpreters of the said Chiefs' own choosing, the following

¹ This refers to a motion of Mr. T. F. Buxton on July 1, 1834, passed unanimously by the House of Commons.

² Theophilus Shepstone, the son of a Wesleyan missionary, was afterwards from 1845 to 1876 in charge, under different titles, of native affairs in Natal. No European, perhaps, has ever had so great an influence over the South African natives, though the wisdom of his policy is sometimes questioned (see on this No. 17, below). It was he also who in April 1877, acting as the instrument of the British Government, annexed the Transvaal.

Articles of Convention were fully agreed upon, in the presence of Hougham Hudson, Esquire, Agent-general, and Charles Lennox Stretch, Esquire, John Mitford Bowker, and Richard Southey,¹ Esquires, Resident Agents for the Kafir Tribes, as also several Kafir Chiefs and Councillors, subject, nevertheless, to the ratification by or on behalf of his said Majesty.

ARTICLE 1.—There shall be peace and amity for ever between his said Britannic Majesty, his subjects (particularly those of the said colony) and the Kafir nation; and both parties shall honestly and faithfully use their utmost endeavours to prevent a rupture of the same; to remove every cause for disagreement which may occur, and scrupulously to abide by the engagements contained in this treaty.

ART. 2.—The boundary between the said colony and the territory restored to the Kafirs by proclamation of this day, is and shall be understood to be that which was agreed upon between the then governor, Lord Charles Somerset, and the Kafir chief Gaika, in the year 1819. . . .

ART. 3.—The said contracting chiefs do for themselves, and their tribe, and their heirs and successors, acknowledge the right of full sovereignty of his said Britannic Majesty, over the territory to the west of the said line, renouncing for ever all claim, which they, the said chiefs or tribe, may ever have had, or supposed to have had, to the same or any part thereof.

ART. 4.—The said contracting chiefs, therefore, accept as a special mark of his said Majesty's grace and favour any part of the territory between the Keiskama and the Kat River, as a loan, to be by them, or their tribe, or any part thereof held upon such terms, and to such extent as shall be laid down by or on the part of his said Majesty, which terms shall be incorporated in this treaty; they, the said chiefs, promising at no period ever to lay claim to the possession or occupation of any other part of the territory known by the name of the Ceded Territory, except such part as shall be allotted to them in the manner hereinabove stated.

ART. 5.—The said Lieutenant-governor doth hereby, in the name of his said Majesty, grant unto the said chiefs and their tribe, that part of the said territory called the Ceded Territory, to be specified at the foot of this treaty, according to a map to be formed by a competent officer, and to be hereunto annexed, which territory shall be held by the said chiefs and tribe, their heirs and successors in perpetuity, never to be reclaimed by or on behalf of his said Majesty, except in case of hostility committed, or a war provoked by the said chiefs or tribe, or in case of a breach of this treaty, or any part thereof, and for which breach satisfaction or redress shall not be otherwise given or obtained.

¹ Richard Southey was later Colonial Secretary of the Cape and Lieutenant-Governor of Griqualand West.

ART. 6.—The said contracting chiefs and their tribe shall, in the said territory so granted unto them, enjoy the full and entire right to adopt or adhere to the Kafir laws, or any other law which they may see fit to substitute, as also to expel or exclude from the same any person whom they do not think proper to admit or retain; and, with the exception of the contingencies of hostility, war, or breach of these treaties, specified in the foregoing Article 5, the right of his said Majesty to the dominion over the said territory shall in no way be exercised therein, any more than in any part of Kaffraria itself, subject, however, to the restrictions and conditions specified in the following article.

ART. 7.—His Majesty reserves his right of stationing troops and building forts in the said territory, and availing himself for that purpose of all the facilities and materials within the same, as also to appropriate a certain necessary space round said forts, to be regularly marked out for the use thereof; also to keep open the communication with and between said forts, and to send supplies to the same; but no patrolling through or scouring of the said territory is to be permitted to the said troops, who are not to deviate from the said lines of communication, or in any way to molest, disturb or interfere with the inhabitants. . . .

ART. 9.—No Kafir, armed or unarmed, single or in number, male or female, shall be allowed to cross the boundary line . . . westward; and no British subject, armed or unarmed, single or in number, shall be allowed to cross the same, eastward, except with permission, and under the restriction hereinafter to be specified in Articles 14 and 21, save and except the military parties or escorts communicating with and between the posts mentioned in Article 7 of this treaty.

ART. 10.—The said contracting chiefs shall, when called upon by the said Lieutenant-governor, and previous to the occupation of any part of the territory thus granted to them, with the concurrence of the said Lieutenant-governor, or person appointed by him, fix upon certain points in their said territory, as near to the said boundary line particularized in Article 8, and to each other, as convenient, at each of which they shall station a chief or responsible man of the tribe, to be called, for the sake of distinction, 'Pakati,' to reside there, and to act as a guard.

It shall be the duty of such amapakati to keep a good and constant understanding with the commanding officer of the military post on the colonial side of the said boundary, which shall be nearest to their said residences, and to do everything in their power to prevent inroads or aggressions, either on the part of the colonists against the Kafirs, or of the Kafirs against the colonists.

The amapakati who shall be so stationed must, by the said contracting chiefs, be made known by name to the officer commanding the military post nearest to such station, and any change, either of

person or station, which may take place with reference to the said amapakati, must be previously communicated to the said officer.

The amapakati shall be responsible to their own chiefs, who will see the necessity of selecting for such stations trustworthy men, and to punish every neglect, fraud and deception which they may commit, as the said contracting chiefs hereby pledge themselves to do.

ART. 11.—The said Lieutenant-governor engages, on the part of his said Majesty, to place one or more agent or agents to reside in convenient situations near the residence of some of the principal chiefs, which agents shall act solely in a diplomatic capacity; and the said contracting chiefs bind themselves to respect such agents as the representatives of the British Government, and to protect their persons, families and property, to the utmost of their power, and to leave them full liberty of ingress and egress through their (the chiefs') territory, or across the boundary into the colony, at all times, without the least molestation or hindrance.

ART. 12.—All representations, complaints or applications, which may be made on the part of the colonists, or their government, to or against the Kafirs, or on the part of the Kafirs, to or against the colonists, or their government, shall be made through the said diplomatic agent or agents, who shall be bound to observe the strictest impartiality and justice, and exert their utmost abilities to promote the peace and prosperity of the colonists, as well as of the Kafirs, to maintain the rights of both parties inviolate, and to cause the provisions of this treaty to be strictly observed.

ART. 13.—The said contracting chiefs bind themselves to afford free access to the said agents, to all persons from the colony, provided with such passes as shall be hereinafter specified. They also agree, that Kafirs may be engaged by the Colonial Government, and stationed at the military posts as policemen, and pledge themselves that they or any others employed as such policemen shall have free access into their territory, either with messages, or in tracing out, with the assistance of the amapakati, depredators, or such criminals as shall have committed crimes in, and have escaped from, the colony, promising also to give them, and cause them to receive in their said territory, every assistance and protection.

ART. 14.—Any British subject desirous of crossing the boundary into the territory inhabited by the Kafirs, with the view of communicating with one of the agents, shall be bound to obtain a pass from the officer commanding the post nearest to the spot where he wishes to cross the boundary; the officer shall send a messenger with him to the pakati, who may be stationed nearest to the said spot, according to the provisions in the 10th Article of this treaty, which pakati shall be bound to cause such persons to be safely conducted to the station of the resident agent, with whom he intends to communicate; but no person, so entering such

territory, shall be at liberty to go with fire-arms, or other weapons of offence or defence, except with the consent of the said amapakati, or of a chief. . . .

ART. 17.—Such British subjects as shall obtain licences to trade beyond the said boundary shall not be allowed to enter the said territory, without the consent of the said contracting chiefs, who, however, pledge themselves and promise to encourage trade and commerce to the utmost of their power, and to protect and encourage those traders whom they shall permit to enter their territory, as long as they conduct themselves orderly and lawfully, with all their means and authority, to cause their persons, families and property to be respected and inviolate; never to allow any of them, or any other British subject in their said territory, to be prosecuted, fined, or in any way made to suffer by any proceeding or custom connected with witchcraft, but on the contrary to give such British subjects at all times free access to the British agents, and to pay due attention to the representations of such agents, as well as to give satisfaction or redress upon their just remonstrances or complaints; but the said agents shall not be bound or permitted to extend their interference or protection in case of any seizure, to whatever extent, made upon the property of any British trader, or other person among the Kafirs, who shall be proved to them to have imported into the territory occupied by the Kafirs such articles as are by the laws of the colony forbidden to be carried for sale across the frontier. . . .

ART. 20.—If any British subject commit a crime or misdemeanor in the said territory of the said contracting chiefs, and escape out of the same across the said boundary, the said agents shall exert themselves to obtain satisfaction for the aggrieved party by means of the British courts, and in every respect exert themselves with as much zeal for the Kafir who may thus be wronged by a British subject, as he is bound to do in behalf of the British subject who may be aggrieved by a Kafir.

ART. 21.—Any Kafir, or other native residing among the Kafirs, who shall be desirous of crossing the boundary into the territory inhabited by the colonists, shall be obliged to do so unarmed, and shall be bound to obtain a pass from one of the British agents residing among the Kafirs; such pass shall be explicit, in the English and Dutch languages, specifying the name of the applicant, the place of his destination, the object of his visit, the number of days he may be absent, and the date when granted.

No pass shall be so granted except at the request of, or upon the production of an understood token of a respectable chief, who will engage to be responsible for the conduct of the applicant during his stay in the colony; and it must be clearly explained to such applicant, that such pass will not protect him if he deviate from the road to the place of his destination, or go armed, or skulk in retired places, or

exceed the period specified in the pass, or travel with others of his nation who are not provided with passes, in either of which cases he shall be dealt with as if he had no such pass. The agent shall grant no pass if he has the least suspicion of the motives of the applicant's visit to the colony, nor unless he has reasonable cause for such a visit.

Visits on the part of idlers are, for the sake of the colony as well as the Kafirs, to be by no means encouraged; the agent shall refuse them, and he shall also keep an accurate register of such passes as he shall grant, of the names of the chiefs at whose request they are granted, which names must also be stated upon the passes.

All Kafirs, or others actually in the employ of agents, missionaries, or traders, will however be allowed to enter the colony with passes from such employers, provided such passes clearly state the names of such servants, their destination, and the time for how long they are to be in the colony.

ART. 22.—All Kafirs found without such passes to the westward of the said boundary shall, for the first time, be immediately sent across the frontier, and delivered over to the nearest of the amapakati, mentioned in Article 10 of this treaty, who shall be bound to punish them, or cause them to be sent to the chiefs, who hereby pledge themselves to use every endeavour, and to cause laws and punishments to be established for the purpose of preventing such encroachments upon the colonial territory; and any Kafir found so offending for the second time, shall be punished according to the laws already established, or to be hereafter established, for the punishment of such offences.

ART. 23.—Any Kafir found in the act of committing any crime or depredation within the said boundary, shall be dealt with according to the laws of the colony; and it is to be clearly understood, that in case of resistance, or attempt at flight on the part of such criminals and depredators, it is perfectly legal to fire upon them, or otherwise to disable or kill them if they cannot in any other way be secured, or prevented from completing such crime; but if such criminals or depredators, being pursued upon the spoor, be not overtaken before they shall have crossed the line occupied by the said amapakati, the course agreed upon in the following Article shall be adopted for the apprehension of such criminals or depredators, or the recovery of property carried off by them; and on no occasion whatever shall any patrol, or armed party of any description, be allowed to cross the said line so occupied for the said purpose.

ART. 24.—If any person being in pursuit of criminals or depredators, or property stolen by them, shall not overtake or recover the same before he shall reach the said line (provided he can make oath that he traced the said criminals, depredators, or property, across a particular spot on the said line; that the property when stolen was properly guarded, and in case of cattle, horses, or the like, that they

were so guarded by an armed herdsman; that the pursuit was commenced immediately after such property was stolen; that if the robbery was committed during the night, the property had been, when stolen, properly secured in kraals, stables, or the like, and that the pursuit in that case was commenced, at latest, early next morning), such person shall be at liberty to proceed direct to the pakati living nearest the spot where he can swear such traces to have crossed the said line, which pakati shall be bound at once to receive the statement, examine the traces, and, if the statement appear well founded, use his utmost endeavour to recover the stolen property, as well as the perpetrators pursued; and it will be at the option of the party pursuing to continue the search at once, under the guidance of the said pakati, provided he do not go armed, or accompanied by armed British subjects, or assist in any violence of any kind within the said territory. If the party pursuing shall thus, with the assistance of the said pakati, or with that of the police, to be hereafter named, recover the property pursued, he shall be at liberty to proceed with the same either to one of the said agents or to one of the military posts most convenient to himself, in order to make before such agent or officer commanding such post a statement of his proceedings, and the quantity and nature of the property recovered, which statement he shall be liable at all times to be called upon to make oath to; after making which statement he shall be at liberty to carry off the said property, leaving the said pakati or police to pursue the criminal, and to recover compensation for their exertions by means of the Kafir chiefs and their councils, according to the Kafir usage; and the said contracting chiefs do hereby bind themselves in all such cases to exert themselves to the utmost to cause the criminals to be apprehended and punished, as well as on all occasions to cause the said chiefs and policemen to be equitably rewarded for their exertions.

ART. 25.—If, however, a party pursuing stolen property and depredators in the manner specified in the foregoing article shall deem it more safe, convenient, or expeditious to proceed to the nearest military post, he shall be at liberty to do so. The officer commanding such post shall provide such party (after he shall have stated himself prepared to make oath required in the said foregoing article) with a policeman, who shall accompany such pursuing party to the spot where the said traces cross the said line, and examine the same, with the assistance of the said pakati, whose presence must be obtained. He the said pursuer shall then, if he do not think fit or safe to follow the spoor further, or having so followed the same, prove unsuccessful, proceed to the resident agent for the chiefs into whose territory the criminals and property were traced, and before the said agent lodge his complaint upon oath; and, in case of lost property, swear particularly to the circumstances stated in the said foregoing article, and also the exact value of the property stolen and not recovered; unless

this affidavit be made, the agent shall take no further notice of the case; but as soon as such affidavit shall be made, the said agent shall, if he have no reason to discredit the same, (he being at all times at liberty to demand further proof, and it being at all times the bounden duty of the party complaining to produce good and sufficient proof,) to lay the case before the chiefs of the territory into which the criminals and property were traced. And the said chiefs do hereby engage to call a council, and to enter into the strictest investigation; to cause the stolen property to be recovered if possible, and the perpetrators punished. And the said chiefs do further pledge themselves and engage, that if at the end of one month after the case shall have been laid before them, the said perpetrators or property shall not have been discovered, and if it shall nevertheless have been clearly proved before them and their said council, by the evidence of the said pursuer, pakati, and policeman, or other proof, that the property was traced into their territory, they the said chiefs shall at once indemnify the person robbed to the full value of the property lost, and no more, and compensate the said pakati and police for their exertions.

ART. 26.—With the exception of indemnification obtained through the said chiefs and council in the manner specified in the foregoing article, no person pursuing stolen property shall be allowed to take any but his own property, or the identical property he is in pursuit of, even if tendered to him, on pain of having to restore the property so taken, and losing all further claim to the property actually lost.

ART. 27.—The said contracting chiefs do agree, promise, and pledge themselves to encourage and protect by every means in their power the propagation of the Christian religion throughout their territories, as also to protect in their persons, families and property, the teachers and ministers of the said religion, and all British subjects, of whatever description, who may sojourn in or enter into the said territory, with their consent or according to the terms of this treaty, as long as they conduct themselves with propriety and submission to the law; and never under any circumstances to allow them to be molested or subjected to any prosecutions or penalties, upon the plea or pretence of the laws and usages connected with or instituted against witchcraft; as also to leave them free access to and communication with the colony.

ART. 28.—The said contracting chiefs do also agree, promise, and pledge themselves to abstain, and cause their tribe to abstain, from any way molesting or interfering with the Fingoes who are or will be located in the said Ceded Territory, but to consider them as under British protection; to leave them in full enjoyment of their property, laws, or customs, and in no way to avenge any grievance or dispute which may heretofore have existed between the Kafirs and the said Fingoes.

The said contracting chiefs also promise to remain at peace with the other tribes of Kafirs; cautiously to abstain from reviving any difference or jealousy which may heretofore have existed among them, and particularly those which may have been caused by any proceeding of any party during the late war. And the said chiefs also promise solemnly to live at peace with the Tambookies,¹ and to do everything in their power to promote the tranquility of the several tribes of their own nation and all other bordering tribes, as well as of the colonists.

6

MANIFESTO OF THE EMIGRANT FARMERS

(February 2, 1837)

(C. O. 48/172: P. R. O.)

. . . Numerous reports having been circulated throughout the colony, evidently with the intention of exciting in the minds of our countrymen a feeling of prejudice against those who have resolved to emigrate from a colony where they have experienced, for so many years past, a series of the most vexatious and severe losses; and, as we desire to stand high in the estimation of our brethren, and are anxious that they and the world at large should believe us incapable of severing that sacred tie which binds a Christian to his native soil, without the most sufficient reasons, we are induced to record the following summary of our motives for taking so important a step, and also our intentions respecting our proceedings towards the native tribes which we may meet with beyond the boundary:

1. We despair of saving the colony from those evils which threaten it by the turbulent and dishonest conduct of vagrants, who are allowed to infest the country in every part;² nor do we see any prospect of peace or happiness for our children in a country thus distracted by internal commotions.

2. We complain of the severe losses which we have been forced to sustain by the emancipation of our slaves, and the vexatious laws which have been enacted respecting them.

3. We complain of the continual system of plunder which we have ever endured from the Caffres and other coloured classes, and particularly by the last invasion of the colony, which has desolated the frontier districts, and ruined most of the inhabitants.

4. We complain of the unjustifiable odium which has been cast upon us by interested and dishonest persons, under the cloak of

¹ The Tambookie or Tembu tribe lived to the north of the Amatola Mountains, between them and the Stormberg. They were a tribe who seldom gave trouble.

² The Ordinance of 1828, which gave the Hottentots virtual equality before the law and freed them from the necessity of having passes from their master or local magistrate, was followed by many complaints of Hottentot vagrancy.

religion, whose testimony is believed in England, to the exclusion of all evidence in our favour; and we can foresee, as the result of this prejudice, nothing but the total ruin of the country.

5. We are resolved, wherever we go, that we will uphold the just principles of liberty; but, whilst we will take care that no one shall be held in a state of slavery, it is our determination to maintain such regulations as may suppress crime, and preserve proper relations between master and servant.

6. We solemnly declare that we quit this colony with a desire to lead a more quiet life than we have heretofore done. We will not molest any people, nor deprive them of the smallest property; but, if attacked, we shall consider ourselves fully justified in defending our persons and effects, to the utmost of our ability, against every enemy.

7. We make known, that when we shall have framed a code of laws for our future guidance, copies shall be forwarded to the colony for general information; but we take this opportunity of stating, that it is our firm resolve to make provision for the summary punishment of any traitors who may be found amongst us.

8. We purpose, in the course of our journey, and on arriving at the country in which we shall permanently reside, to make known to the native tribes our intentions, and our desire to live in peace and friendly intercourse with them.

9. We quit this colony under the full assurance that the English Government has nothing more to require of us, and will allow us to govern ourselves without its interference in future.

10. We are now quitting the fruitful land of our birth, in which we have suffered enormous losses and continual vexation, and are entering a wild and dangerous territory; but we go with a firm reliance on an all-seeing, just, and merciful Being, whom it will be our endeavour to fear and humbly to obey.

By authority of the farmers who have quitted the colony

(signed) P. RETIEF.¹

¹ Piet Retief was a 'Field Commandant' of the Winterberg district, but unofficially had been for some little time the leader of the discontented farmers of the Eastern Districts. In 1838 he and some companions were murdered by the Zulu chief Dingaan, with whom they had been treating for the cession of Natal. His qualities of leadership were much missed in the years that followed.

DESPATCH FROM GLENELG TO NAPIER

[EXTRACT]¹

(C. O. 48/172: P. R. O.)

Downing-street,
28 November 1837.

SIR,

Among the subjects which, in my despatch to you of 13th November, I reserved for separate notice, is that of the recent emigration from the colony of the Cape of Good Hope. Sir B. D'Urban, in his despatch of the 29th July, No. 48, has adduced this emigration in proof of the justness of his views as to the course of policy lately pursued by Her Majesty's Government in regard to the frontier tribes.

It is assumed by Sir B. D'Urban, in more than one of his despatches, that the emigration in question is to be ascribed entirely to that policy. But this is a gratuitous assumption, not in any degree countenanced by the facts of the case. It is indeed discountenanced by anticipation by Sir B. D'Urban himself in a despatch to Lieut.-governor, No. 25, of the 13th of October 1836. In that despatch occurs the following passage, 'As to the spirit of expatriation having arisen from the system adopted on the border since September 1835, I must avow that I cannot agree in that assumption, since that spirit has existed for several years, as is well known to your Honour, and can scarcely have had so recent an origin; and indeed I observe in your letter to me, No. 17, that you had already predicted that expatriation in 1834.' It is here fully admitted, nay urged, by Sir B. D'Urban, that the origin of this practice is to be traced to a remote period, considerably antecedent to the time when I received the seals of this department. If it has been more extensively adopted of late, to what causes, then, is the wider adoption of it at the present time to be ascribed?

Referring to the Lieut.-governor's despatches . . . I find on this subject details so copious, and so slightly, if at all, contradicted by the Governor, as to exclude all reasonable doubt as to the proximate causes of the emigration of the farmers. These are, first, that the purchases made by the commissariat during the war had remained unpaid for; secondly, that the farmers had been living since the peace in a state of constant alarm; thirdly that they had solicited in vain the completion of the titles to their lands; fourthly, that the local magistracy had been unable to act in consequence of their not having been supplied with any instructions, stating the nature or the duties of their office; fifthly, that the farmers were dissatisfied with the abolition of slavery; sixthly, that they were dissatisfied with the tardy payment of the compensation money; and seventhly, and

¹ On Sir G. T. Napier, see above, p. 47, note 1.

above all, that being ignorant and illiterate persons, they had been made the victims of systematic misrepresentations and falsehoods propagated by persons who sought to enrich themselves by fomenting a new war, or by inducing the farmers to sell on easy terms the estates which they were about to abandon.

But further, in the document (it may almost be termed the official document) put forth by the emigrants, to explain and justify their emigration, three causes are assigned for that movement. The one of these is the insecurity of the frontier, the other two are, the abolition of slavery, and the non-enactment of the vagrancy law: of which two complaints, the former it is enough to mention, and the second applies to a period earlier than 1835, and to a proceeding of Sir B. D'Urban, who very properly refused to sanction the vagrancy law here alluded to.

After all, however, the motives of this emigration are sufficiently obvious even without recurring in detail to the circumstances just enumerated. They are the same motives as have, in all ages, compelled the strong to encroach on the weak, and the powerful and unprincipled to wrest by force or fraud, from the comparatively feeble and defenceless, wealth or property or dominion, richer pastures, more numerous herds, and a wider range of territory. Opportunities of uncontrolled self-indulgence and freedom from the restraints of law and settled society, are, it would appear, in all countries, irresistible temptations to the inhabitants of the border land of civilization. The history of Great Britain, as well as of Europe in general, abounds with illustrations of this truth; and among other parts of the world, Southern Africa has furnished not a few examples of it. That the same process should now take place in the eastern, which has been for many years taking place along the northern frontier of the colony, and which, in preceding times, has extended the colony to its present limits from the point of the Cape, cannot be matter of surprise; nor would it be surprising, if the statement should prove correct, that the invaders in question have not been very scrupulous as to the number of victims whom they have sacrificed to their purposes.

This natural impulse to emigration has, in the present instance, most probably shown itself in a more violent and systematic form, in consequence of the peculiar circumstances which the Lieutenant-governor has specified. So far as the evils to which he refers are remediable, the Lieutenant-governor will, I know, have left nothing unattempted to remedy them. It will be your duty and care to co-operate with him; but with whatever success those efforts may be attended, enough, I apprehend, has been stated, to show that the emigration and its consequences are attributable to many causes, wholly unconnected with that policy which it has fallen to my lot to pursue and inculcate.

I trust it may be found that the emigrants have not been guilty of the slaughter of the natives which has been laid to their charge; but if any such proceeding has taken place, it will demand your most serious attention. I entirely concur with the Lieutenant-governor in considering it as a system of wanton and unjustifiable homicide. The natives must be most distinctly apprised, that the Queen regards such hostilities against them with just indignation, and that the aggressors will find no countenance or protection from Her Majesty's officers, but will be brought to merited punishment, if sent back to the colony with sufficient proof of their criminality.

Sir B. D'Urban inquires, at the close of his Despatch No. 48, as to the relations to be henceforth maintained with the emigrants in their new condition, observing that they can scarcely be regarded in any other light than that of a separate colony. My answer is, that they must be regarded as subjects of the Queen, for such they really are, but they are subjects who have placed themselves beyond the reach of Her Majesty's protection, by measures which Her Majesty altogether discountenances and condemns. Their attempt, as reported to the Lieutenant-governor by the field-cornet of the Klaas Smid's River, to seize the property of the unoffending natives, and punish their resistance by a massacre of several hundreds of them, is an outrage which cannot be denounced in terms too strong of reprobation. If, indeed, the facts be correctly reported, they cannot fail to reduce the individuals concerned in their perpetration from the class of useful citizens and good subjects, to which they appear originally to have belonged, to that of freebooters and marauders. . . .

I have, &c.

(signed) GLENELG.

8

DESPATCH FROM NAPIER TO RUSSELL

(September 21, 1840) [EXTRACT]

(P.P., 1851, xxxviii.)

I have delayed entering upon this subject in order to give a fair and lengthened trial to the working of the treaties, with every wish and hope on my part that time would bring things to a proper state; but, my Lord, delay is no longer possible without the risk, nay, almost the certainty, of the plundered, harassed, and, I am forced to admit, justly irritated farmers, taking the law into their own hands, and suddenly entering the Kafir territory with commandos to retake their plundered cattle by force, if not to revenge by bloodshed all their wrongs; and once an armed party of irritated farmers enter

Kafirland under no control, and influenced by their passions, the consequences must prove fatal to the peace and returning prosperity of the colony.

My Lord, I can conscientiously affirm there is no man breathing who is more disposed to assert the right of the black man to be on an equal footing with the white, or to admit that the aborigines of this or any other colony were the people who had the just right to the proprietorship of the soil; and God forbid that I should ever be the advocate of the unjust or inhuman policy which calls for the seizure of the land from those whom Providence has placed on it, be they white or black, Christian or heathen; but this is not the question; neither would it be just to say, after the number of years which have elapsed since this became a British colony, that because the original colonists unjustly drove out the aborigines, we are now to visit their sins upon a set of men who were not accessory to, and could not be blamed for, the former cruel or unjust transactions, which took place under a less humane or civilized Government. No, my Lord, we can only look to things as they are, and in this view it becomes the duty of a Government to protect, to the utmost of its power, those who are under its administration, and who look up to it as the source from whence they are to receive justice. Therefore, I feel it to be my bounden duty to represent to your Lordship, that the time is come when I can no longer avoid entering into the complaints and grievances under which the border farmers labour, as regards the constant plunder of their flocks and cattle, and the slaughter of their armed herdsmen; and it will be my principal object on my arrival on the frontier to enter fully into this most grave and important subject; and although I cannot disguise from your Lordship the very great difficulties and dangers which beset my path, still I do not despair of accomplishing my views and wishes, as I am much inclined to believe, from my own knowledge of the chiefs when on the frontier two years ago, that I shall be able to convince them of the necessity, for their own interest, as well as that of the colonists, of some of the articles of the treaties being altered altogether, or, at all events, modified and improved.

9

DESPATCH FROM NAPIER TO STANLEY

(July 25, 1842) [EXTRACT]

(Bird, *Annals of Natal*, vol. ii.)

It is proposed by your Lordship to withdraw the detachment from Natal; to tell the emigrants that Her Majesty is willing to extend an amnesty and pardon to such of them as shall return within a time, to be limited for the purpose, within the precincts of the colony; that

the Government will lend every assistance in its power to facilitate their return, and their settlement here; that so long as they persist in residing in the territories which they occupy, Her Majesty's Government will take every practicable and legal method of interdicting all commercial intercourse and all communication between them and the colonists; that if they should presume to molest, invade, or injure the Kafir tribes with which Her Majesty is in alliance, Her Majesty's forces will support these tribes in resisting such aggressions; and lastly, if the laws of the colony are not sufficient, I am directed to propose to the Legislative Council the enactment of a law having for its object to oppose the most effectual obstacles which can be raised to the supply to the emigrants of any articles of which they may stand in need, and especially of gunpowder, firearms, and other munitions of war.

In reasoning on this subject, I should be able to make myself understood if I could place your Lordship in possession of a good map showing the various locations formed by the emigrants beyond the colonial boundary. In the absence of a better, however, I beg to transmit one made by Captain Harris in the year 1837 and I shall endeavour to point out difficulties attending the course indicated by your Lordship.

Firstly,—Many of the farmers who live beyond the Orange River, and have located themselves on the banks of the Modder, Riet, and Sand Rivers, under Oberholster and Potgieter, have never shown any disposition to molest the Government, but on the contrary have ever evinced a desire to be recognised by and received under the protection of the colonial Government.

Their withdrawal from the colony arose in many instances from a desire of procuring more extensive pasturage for their cattle, or from a love of a wandering life; were these people again brought back to the colony, they have no means of purchasing farms, their habits are not such as would enable them to turn to any other occupation than cattle farming as a means of obtaining a livelihood; and even if they could do so, their pride and prejudices are so absurd, that they prefer the precarious and wretched existence which they at present lead to one of a more settled, but at the same time of a more menial, occupation. Mr. Bain, a gentleman lately returned from that country, Mr. Burke, a naturalist employed in making collections for the Earl of Derby, and everyone who has visited them of late years, describe them as living in a state of barbarism, dressed in the skins of animals, their woollen clothing being worn out, and no means left of procuring others, but still enjoying that ease and freedom from restraint which compensate for all their sufferings.

These would doubtless be pleased to have the protection of Her Majesty extended to them; but not one of them would return to the colony if the option of so doing was presented to him. That they

attack the tribes of wandering Bushmen, kill the old ones, and bring up the young ones as their slaves or servants, is well known; but this line of policy is adopted by them because they look upon these people as noxious animals, whose destruction is a praiseworthy act, and independent of such proceedings, which the nature of their life and the predatory habits of the natives render in some degree necessary for their own safety, they have never attempted to set the Government at defiance—indeed, many of them highly disapprove of the proceedings of their fellow-countrymen at Port Natal, and have declared their determination not to join in or countenance their rebellion. In the immediate vicinity of these emigrants dwell large tribes of natives, among whom are our allies, the Griquas,¹ under the chief Waterboer.

Were a cordon drawn prohibiting all commercial intercourse beyond the boundary of the colony, not only would these emigrants but also the Kafirs and the tribes to the northward, be shut out from the visits of traders: a kind of intercourse which tends much to the civilization of the native tribes.

Secondly,—Even were it politic to prohibit this intercourse, does the nature of the country admit of the execution of any strict prohibitory laws? I submit not. The laws of the colony respecting the trade in gunpowder and munitions of war are very stringent, but in the absence of an immense military force, or of a large and effective rural police, it is found impossible to prevent illicit traffic where we have an unguarded boundary of many hundred miles in length, with about one hundred drifts or fords of the Orange River passable at all times, except when the river is swollen from heavy rain; add to these difficulties the impossibility of entirely prohibiting the sale of gunpowder in a country where the inhabitants are frequently called upon to defend themselves against the predatory attacks of the Kafirs and other wandering hordes which infest the Eastern Districts, and the fact that there are many in the colony who view the emigration of their fellow-colonists not only as a justifiable, but as a proper measure, and I think your Lordship will be convinced that no laws could be enforced along a border of such extent, and in a country so thinly peopled, except at an expense in maintaining a military force quite disproportionate in expense to any good which could be expected to result therefrom.

Thirdly,—The withdrawal of the detachment from Natal would take out of the hands of Government the most effectual means of checking the trade of the emigrants living between the Drakensberg Mountains and the sea. Vessels might be prevented from clearing out for that port from this colony; but by maintaining a post there and, if necessary, denying access to foreign vessels, whether Dutch

¹ The Griquas were a half-breed tribe, predominantly Hottentot in blood, living on the northern frontier of the colony near the Orange River.

or American, is the only way by which we can cut off supplies being furnished to the emigrants from without.

But were it practicable—whether by a military or naval force is immaterial—to establish a strict blockade, would it be, under the circumstances, altogether expedient? Many of the inhabitants of Natal are Englishmen, who have been established there for some years, and others among them have always shown themselves friendly to the English, having taken no active part in the late rebellion, or in the contests with the natives; their only crime is that, preferring the liberty of a wandering life, or allured by the beauty of the country, they sold their farms and left the colony in the hopes of bettering their fortunes. They have many friends who would view with great dissatisfaction any severe measures which might be employed to coerce them, and a greater feeling of alienation against the English Government would be engendered in the minds of the descendants of the Dutch colonists than now exists, although I believe that such feelings are at present sufficiently strong.

Fourthly,—And, independently of the above considerations, it appears to me that the withdrawal of the troops is for the present impossible. In all probability there are many who ere this have taken such decisive steps in favour of the troops, that the withdrawal of that protection would be the signal of their destruction by the party who are the strongest, and who have evinced such determined and bitter hostility to Captain Smith.¹ Generally speaking, however, the abandonment of Natal would be a most popular measure with the majority of the emigrants, who neither desire the protection nor are even willing to submit to the authority of the Queen: to such the re-establishment of their so-called Republic would be a matter of joy and triumph. They would be immediately joined by others from the colony: the same wars with the natives would be renewed, and the same justification would be put forth as a cloak to cover the atrocities which have marked, and which will continue to mark, the proceedings of a body of men who are not responsible to any constituted authorities for their actions, and who are daily brought into contact with the native tribes by whom they are surrounded, and on whose land they are settled.

That the emigrants will attempt to find reasons to justify their rebellion, and their attack upon Captain Smith, is evident from the enclosed narrative of their proceedings, which was intercepted on its way to the colony for the purpose of publication in the newspapers. In the case of the attack upon 'Ncapai,² the plea of aggression was put forth as their justification; and in the present instance, by an

¹ Captain T. C. Smith was in command of the detachment of British troops stationed at Port Natal.

² 'Ncapai was the chief of the Baca tribe, which had been driven from Natal by the great Zulu warrior Chaka and had settled on the Umzimvubu River in what is now Griqualand East.

artful combination of truth and falsehood, the officer in command of the troops is placed in the light of the aggressor, when in reality, by annoyances and determined hostility, he was compelled to adopt measures which he would willingly have avoided.

Lastly,—I beg to call your Lordship's particular attention to the question as affecting the welfare of the native tribes and the suppression of slavery.

In all your predecessors' communications relative to the resumption of Natal, I understood Lord John Russell as expressing himself determined to support against aggression any of the Kafir tribes who might call on me for aid, and to whom it might be in my power to despatch assistance; for in allusion to the attack upon 'Ncapai, with whom we have no treaties, his Lordship, in his despatch No. 165, of the 17th April, 1841, observes: 'If, as you seem to anticipate, any of the Kafir tribes which are threatened by the emigrant farmers should offer to place themselves under the Queen's protection, you are authorised to promise it to them, but not to annex their territories to the colony.'

In your Lordship's present communication, I find that a distinction is drawn between the mode of procedure to be adopted in the event of the emigrants attacking the tribes, with whom Her Majesty is in alliance, and others with whom we have formed no treaties, but with whom we have always lived on friendly terms.

Whether such distinction is intentional or not, I am not sufficiently informed, and therefore submit it for your Lordship's consideration; but if such a line is to be drawn, the whole of the tribes belonging to Panda, Faku, and 'Ncapai,¹ as also those resident between the Orange River and the Drakensberg, with the exception of the Griquas, might be attacked and exterminated by Her Majesty's subjects, and no protection could be afforded to them by the Government whose subjects were committing these acts, in defiance of the Queen's express commands. The consequences of such proceedings would entail great eventual evils on the colony, and a day would undoubtedly arrive when the Government would be compelled to interfere in a manner which may be avoided if these people are at present reduced to some kind of order and obedience.

Assuming that your Lordship will never tolerate the existence of slavery in the vicinity of one of the possessions of the British Crown, where the slaveholders are subjects of the Queen, I may observe that it is in vain to disguise the truth that many of the natives are slaves in everything but the name. It is notorious that their services are

¹ Faku was the paramount chief of the Pondos, who lived in the same region as the Bacas nearer the coast: the territory, still called Pondoland, adjoins the southern frontier of Natal. Panda was the chief of the Zulus, having with the aid of the Boers defeated and succeeded his brother Dingaan in 1840. He remained chief until 1872, though for many years the power had really been in the hands of his son Cetewayo.

compulsory, and that they are subject to the caprice and ill-treatment of their masters, perhaps even in a greater degree than in slave colonies, where the arm of the law affords the servant a certain degree of protection. If the authority of the British Government is withdrawn from Natal, slavery will be there established.

These considerations have determined me to retain military occupation of the Port until I shall hear from your Lordship on the subject, being convinced that the withdrawal of the troops at present would be attended by the evil consequences which I have pointed out, and that in all probability we should have to retake it in a few years, even at a greater cost of life and money than has attended the present occupation.

10

PROCLAMATION OF NAPIER

(Bird, *Annals of Natal*, vol. ii.)

By His Excellency Major-General Sir GEORGE THOMAS NAPIER, K.C.B., Governor and Commander-in-Chief of Her Majesty's Castle, Town, and Settlement of the Cape of Good Hope, South Africa, and of the Territories and Dependencies thereof, and Ordinary and Vice-Admiral of the same, Commanding the Forces, &c., &c.

Whereas Her Majesty the Queen, in reference to the resistance to her royal authority manifested some time since by certain of her then misguided subjects, resident in the district of Port Natal, hath been graciously pleased to bury past transactions in oblivion, and to declare herself desirous of being able to rely upon the assurances of loyalty and obedience which her said subjects have solemnly and deliberately given: And whereas by a despatch which I have recently received from the Right Honourable the Secretary of State for the Colonies, I have had communicated to me the gracious intentions of Her Majesty with regard to the district aforesaid, as well as the general views of Her Majesty's Government respecting the mode in which the affairs of the said district shall be settled, so as most completely to secure the preservation of Her Majesty's sovereign authority, the prosperity of the people for whose safety and guidance that authority has been asserted, and the peace, protection, and salutary control of all classes of men settled at and surrounding that important portion of South Africa; and whereas, although in a Minute lately laid by me before the Legislative Council of this colony—of which Minute a copy was, by my order, published in the *Government Gazette* of 5th May instant for general information—I have adverted to the principles upon which Her Majesty's Government purpose to proceed in carrying out the beneficent line of policy

already indicated, I deem it nevertheless expedient to promulgate, by way of Proclamation, the substance of some portions of the said Minute, together with certain further details therewith connected, in order, amongst other things, that Her Majesty's Commissioner, hereinafter named, who is upon the eve of his departure to Natal, may be duly accredited, and the general scope and object of his powers sufficiently understood:

Now, therefore, I do hereby proclaim, declare, and make known the several matters following—that is to say:

I. That by virtue of the power and authority in that behalf in me vested, I have nominated, constituted, and appointed the Honourable Henry Cloete, Esq., L.S., LL.D., to be during pleasure Her Majesty's Commissioner for the district of Port Natal.¹

II. That Her Majesty's said Commissioner is authorised to communicate formally to the settlers in the district that Her Majesty has been graciously pleased to approve of and confirm the act of general amnesty of 15th July, 1842, in manner and form as the same was originally granted by Lieutenant-Colonel Cloete, acting under my authority, with respect to the various persons concerned in the late revolt and attack upon Her Majesty's troops.

III. That the district of Port Natal, according to such convenient limits as shall hereafter be fixed upon and defined, will be recognised and adopted by Her Majesty the Queen as a British colony, and that the inhabitants thereof shall, so long as they conduct themselves in an orderly and peaceable manner, be taken under the protection of the British Crown.

IV. That Her Majesty's said Commissioner is empowered and instructed to ascertain in the fullest manner the opinions and wishes of Her Majesty's subjects at Natal, relative to their judicial and other local institutions, in order that suitable arrangements in that behalf may afterwards be made according to the benignant principles explained and set forth in my Minute to the Legislative Council, and which need not be here repeated.

V. That while Her Majesty's said Commissioner is not debarred by his instructions from receiving and recording any suggestions which may be offered relative to the species of legislative authority proper to be established in the colony, he will at the same time cause it to be distinctly understood that upon this subject Her Majesty reserves to herself the most entire freedom of action.

VI. That Her Majesty's said Commissioner is instructed distinctly to declare that the three next mentioned conditions—all of them so manifestly righteous and expedient as to secure, it is to be hoped,

¹ Henry Cloete was a member of the Legislative Council of the Cape. In 1845 he became Recorder of the new colony, and ten years later a Judge of the Cape Supreme Court. He belonged to one of the oldest Cape Dutch families. His brother, Lieut.-Colonel A. J. Cloete, had been sent to reinforce Major Smith in 1842 and had received the submission of the Natal Volksraad.

their cheerful recognition by the inhabitants of Natal—are to be considered as absolutely indispensable to the permission which it is proposed to give the emigrants to occupy the territory in question, and to enjoy therein a settled government under British protection:

1st. There shall not in the eye of the law be any distinction of persons or disqualification, founded on mere distinction of colour, origin, language, or creed; but that the protection of the law, in letter and in substance, shall be extended impartially to all alike.

2nd. That no aggression shall be sanctioned upon the natives residing beyond the limits of the colony, under any plea whatever, by any private person or any body of men, unless acting under the immediate authority and orders of the Government.

3rd. That slavery in any shape or under any modification is absolutely unlawful, as in every other portion of Her Majesty's dominions.

VII. That, pending the promulgation of such definitive arrangements as Her Majesty may be pleased hereafter to sanction and establish, the existing institutions of the district of Natal will not be interfered with, so long as nothing is attempted under colour thereof contrary to the tenor of any of the provisions of this Proclamation, or any of the provisions of the Act of the 6th and 7th William IV, cap. 57, regarding crimes and offences committed by any of Her Majesty's subjects within any territory adjacent to the Colony of the Cape of Good Hope, and being to the southward of the 25th degree of south latitude,¹ or to the loyalty and due obedience owing to the British Crown.

VIII. That with the exception of the expense of maintaining within the district of Natal a military force adequate to its protection, which expense will be borne by the mother country, that colony must in every respect support the charges of its local government.

IX. That in order the better to enable the colony to sustain the said charges, no extrinsic application will be made of any portion whatever of the revenue originating within the same; but all sums of money arising from land, and whether by sale, rent, fine, or quit-rent, shall be vested in Her Majesty: as shall also all dues and customs which may, at any time after the legal establishment of the colony, be collected on any part of the Natal coast; and all sums of money shall be applied exclusively to the maintenance of the civil government of the district.

X. That the farmers and all others holding land within the district shall, pending the further pleasure of Her Majesty, be protected in the enjoyment of all such land as they shall be found by Her Majesty's Commissioner to claim and hold.

XI. That the farmers and all others holding land within the district of Natal will be called upon by the said Commissioner to make

¹ The Act 6 & 7 William IV, cap. 57, known as the Cape of Good Hope Punishment Act, provided for the trial of such offences by the Cape Courts. Of course the offenders had first to be caught.

accurate returns showing the quantity of land which they, or those from whom they derive their claim, shall have *bona fide* occupied for a period of twelve months next before the arrival of the said Commissioner, in order that, after such returns shall have been verified by the said Commissioner, grants from the Crown may be made to the several parties, to such an extent and upon such terms as Her Majesty, taking into consideration the circumstances of the colony, the general welfare of its inhabitants, and the expediency of raising, in any just and equitable manner, such a land revenue as may make the charge of supporting the local government least burdensome to her subjects, may approve of and impose.

XII. That, pending the signification of Her Majesty's pleasure upon the subject, no grant or sales of land in the district of Natal will be made to any person whomsoever; and that all persons are hereby distinctly warned of the absolute futility of any attempt to acquire a title or claim to any lands in the said district by any species of dealing or transaction with any person or persons whatever, save and except in such cases as fall legitimately within the principle of the *bona fide* occupation of twelve months, as in the last preceding articles set forth.

And now, in order that Her Majesty's said Commissioner may be the better able to discharge the important duties with which he is entrusted, I hereby charge and exhort all Her Majesty's subjects to be aiding and assisting him while acting in the performance of his several functions, that so the affairs of the Natal district may be the more speedily and satisfactorily settled and arranged: an efficient though, as much as may be, inexpensive government supported by Her Majesty's power and authority be substituted for an anomalous state productive of weakness and disunion: the gracious desire of Her Majesty to knit the hearts of all her subjects to her person and government, as evinced by her willingness to concede to her people at Port Natal every just personal right, and every reasonable political privilege, be happily accomplished; and the natural resources of that country be gradually developed under Her Majesty's firm but fostering rule, stimulating the industry which can never prosper but beneath settled institutions, and securing the advantages which are enjoyed by every colony of Great Britain.

GOD SAVE THE QUEEN!

Given under my hand and the public seal of the Settlement, at Cape Town, Cape of Good Hope, this 12th day of May, 1843.

(signed) GEORGE NAPIER.

By command of His Excellency the Governor,

(signed) JOHN MONTAGU,
Secretary to Government.

PETITION OF MUNICIPAL COMMISSIONERS OF
GRAHAMSTOWN (August 16, 1843) [EXTRACTS]

(C. O. 48/233: P. R. O.)

To the Queen's most Excellent Majesty, in Council.

The Humble Petition of the Undersigned Municipal Commissioners for Grahamstown, a British Settlement in South Africa. Most humbly sheweth . . .

That under the existing Treaties between the Colonists and the Kafirs,¹ Your Majesty's Petitioners can entertain no hope of seeing the Frontier more tranquil or secure; that the operation of those Treaties from December 1836 to the present period, has been most disastrous to the interests of the border inhabitants, destructive alike to their property and tranquillity and the fruitful cause of much bloodshed.

That numerous instances of daring and unprovoked aggressions, attested by the Official Returns of the Frontier Executive, can be adduced in support of the above Allegations; the following instance is among the number,—that in the first Quarter of last year, ending in March, the Kafirs succeeded in committing Fifty one distinct acts of robbery upon the border farmers, and for which the Chiefs are not held responsible under the onesided operation of the existing Treaties; or bound to make any compensation to the sufferers; that in these forays the Kafirs carried off Eighty five Horses, two hundred and eighty seven head of Cattle and seventy Sheep; out of which were returned, only, 17 horses, 78 head of Cattle and 20 Sheep; that the Official returns are justly silent as to any omission on the part of the farmer; with regard to all necessary precautions being taken; which are of little avail; as in Ten instances the Kraals were forced during the night, and Cattle carried off, notwithstanding the utmost vigilance of the farmers to secure them.

That it would be a matter of no small congratulation to Your Majesty's Petitioners to be able to say that the instances of robbery and violence, reported in the official Returns, were all the frontier inhabitants have to complain of; but unhappily such Returns do not comprize one half of the number; the other, not being reported to the Executive; and that this deficiency in the Returns, arises from the numerous fruitless efforts, which the Colonists have from time to time, both by Petition and Memorial, made for redress; so fruitless indeed, that many regard it, as useless to Report their losses, and despair of obtaining either the removal of their grievances, or compensation for which they are justly entitled, and which losses in some cases amount to entire and hopeless ruin.

¹ The treaties made by Stockenstrom in 1836 (see above, No. 5) were still, with a few unessential alterations, in force.

That among the Acts of brutal violence which have marked the footsteps of the Kafir, Your Majesty's Petitioners lament to state, that on the 14th of December 1842, a young Colonist, named William Harden, in the prime of life, was way laid and barbarously murdered near the mouth of the Fish River in this District, (Albany) on an open plain; his body being found covered with Assagai Wounds,—that on the 23rd July last, Benjamin Palmer and William Brown, also young Colonists, whilst in their peaceful occupation as farmers, fell a sacrifice to these lawless and ruthless Savages leaving widows and families to deplore their untimely fate; and their remains like the former victim, were found pierced with Assagais and otherways frightfully mutilated, exhibiting incontestible evidence that they had been murdered by Kafirs.—that on the 6th of the present month, another British subject was slaughtered by a party of marauding Kafirs, in the neighbourhood of Fort Beaufort, when as in the former instances, the instrument of death, was the Asaygai.

And Petitioners now Humbly implore Your Most Gracious Majesty to commend the correction of these heavy Grievances, the removal of which would restore peace and security to their dwellings and occupations and enable them to pursue their various avocations with cheerfulness and alacrity:—That the existing Frontier System may be superseded; that the principles of the Treaties entered into between Your Majesty's late Governor of this Colony, Sir Benjamin D'Urban, and the Kafir Chiefs on the 6th and 17th September 1835, may be re-established, which appear to Your Majesty's Petitioners well calculated to give security to life and property—to raise the Kafir Tribes in the scale of Civilization, and fit them for the blessings of Christianity, as was manifest throughout the Frontier, during their salutary and humane operation.

And Your Majesty's Petitioners as in duty bound, will ever pray, &c.

12

MINUTES OF STEPHEN AND HOPE [EXTRACT]

(C. O. 48/233: P. R. O.)

Mr. Hope.

9 Feb.

My own conclusions are that the proposed falling back on Sir B. D'Urban's plan is altogether out of the question. We have no right to do it. We have no power except at the expense of a War to do it—a War ignominious if unsuccessful—inglorious if successful—and utterly improvident whether successful or not. It would be incomparably cheaper to pay the Farmers all their losses from year to year. We had a force of nearly 5,000 men traversing the Country

under Sir B. D'Urban, costing vast sums of money, killing a great many people, laying waste the whole territory and yielding Military exploits, the narrative of which in the Cape Gazette one was ashamed to read.

The plan of retaliation by Military Expeditions would probably have no effect but to keep alive an interminable Border War. No one who ever reads the History of the Commandos of old but must most earnestly deprecate the revival of them.

I am quite aware that grievances of this kind have a very different aspect to the sufferers and to observers at many thousand miles distance and I can well understand that the insecurity of a man's cattle is a sore annoyance. But that it should be a cause of War or of Military inroads is not equally clear: If men will settle in the neighbourhood of marauding Tribes they cannot, I think, claim of their Government that at the National expense they should be rescued from the natural penalty of that improvidence any more than the vine dressers and farmers at the foot of Vesuvius can expect indemnity against the effects of an irruption.

Everything which can abate or mitigate the evil should, of course, be attempted; and it seems to me that Col. Hare's other suggestions¹ are well calculated to have that effect. I believe that taking the Chiefs into pay would also probably be a prudent measure.² The difference, if any, between your suggestion and mine is that I would most unequivocally prohibit conquests Wars and Commandos, and would express a favourable judgment of Col. Hare's other suggestions. With this I would connect the Instruction to the new Gov. which you propose. To send the Papers back with nothing more than a direction to him to form his own opinion and to report it would be to make no way and would in the Colony be regarded but as the temporary evasion of a difficulty.

J. S.

Except on the point of calling merely for a report without giving an opinⁿ. there is no difference of opinion as regards at least the first steps to be taken between Mr. Stephen and myself and on that point I think his view the right one.

I do not feel convinced that some coercive measures may not ultimately be required—though I agree in thinking the milder modes should be first tried and that in any case the D'Urban system is out

¹ Colonel John Hare was Lieutenant-Governor of the Eastern Districts from 1839 to 1846, when he died a few days after leaving the colony for England. He had little independent authority, and is commonly dismissed by South African historians as a man of no account, but his views, though they may have been due to the application of narrow military formulas rather than to any qualities of his own, were in more than one respect justified by the event.

² Sir G. Napier had suggested that the chiefs should be given a small annual stipend conditional on their good conduct, with the view of making it to their interest that the treaties should be observed.

of the question. The difficulty of replying to the Colonists as suggested by pointing out to them the consequences which ought to be expected from placing themselves in contact with barbarous tribes, is that these districts were not taken possession of as N. Z^d. without encouragement or authority from Gov^t. but were actually settled by means of a Gov^t. Emgⁿ. directed specially to the spot.

G. W. H. Feb. 10/44.¹

13

DESPATCH FROM GREY TO POTTINGER

(November 2, 1846) [EXTRACT]

(*P.P.*, 1847-8, xliii.)

Downing-street, November 2, 1846.

SIR,

It must be superfluous for me to disavow on the part of Her Majesty's Government any wish to extend the dominions of the Crown in Southern Africa. Considered in themselves such acquisitions would be not merely worthless, but pernicious—the source not of increased strength but of weakness—enlarging the range of our responsibilities, while yielding no additional resources for properly sustaining them. But I am bound to view the case as it actually stands, and to deal with it not in reference merely to any general principle, but with a due regard to the exigencies of our actual position. And, regarding the subject in that light, I cannot escape the conclusion that sound policy, and an enlightened regard for the real welfare of our uncivilized neighbours, not less than for the welfare of the colonists, require that the Kafir tribes should no longer be left in possession of the independence they have so long enjoyed and abused. Our past forbearance they have evidently been unable to appreciate; they have as clearly been insensible to the obligations they have contracted by their treaties with us, and the cupidity or the violence of their younger warriors has proved too strong for any restraints of authority or law. Should we on the successful termination of the present hostilities, brought on by unprovoked aggression on their part, be again content with imposing upon them terms of peace similar to those by which we have allowed former wars to be terminated, there would be no rational ground for expecting that the future history of our relations with those people would prove anything but a repetition of the past. It is therefore requisite that a new policy, more accurately and more carefully adapted to the necessities of the case, should now be adopted.

¹ G. W. Hope was Under-Secretary for the Colonies from 1841 to 1845. He was by no means without ability, though, sandwiched as he was between two such men as Stanley and Stephen, his opinions did not often prevail if they were peculiarly his own.

The indispensable basis of any such policy would be the surrender by the Kafir chiefs and tribes westward of the Keiskamma,¹ of their political independence, and of the territory occupied by them. The territory so ceded must, in fact, become subject to British authority; but I entertain much doubt whether, for the present, it is desirable that it should be declared to be a part of the dominion of the British Crown.

If Kafraria or any part of it were to be added to the Cape Colony, the laws of that colony would as a necessary consequence extend to it. If it should be erected into a separate colony, it must have a separate legislature, upon which must at once devolve the difficult task of determining what system of laws should be there established. As it is, moreover, a barbarous country, possessing no laws under which civilized men could live, it would be impossible, as in other conquered countries, to adopt the laws of the conquered, so that the laws of the conqueror, that is the law of England, would have to be taken as the basis on which the Government and social system of the new colony must be established.

But the Government of such a country and of such a people could not thus be conducted with advantage; it would on the contrary be necessary to establish laws, and to introduce a system altogether inapplicable to the Government of any civilized people who might be brought within the compass of the dominion of the Sovereign of these Realms. It must indeed be a system of law and government, guided by justice and humanity, and zeal for the well-being of the people at large. But it must also be the government of a strong hand directed by a resolute will. For the laws and the institutions of this country there could be no proper place amongst barbarous tribes, because all those elaborate securities against the abuse of power, interwoven with those laws and institutions, presuppose, on the part of the people governed, an habitual self-control in the use of their political franchises.

Hence, though I consider it to be absolutely necessary, not less for the sake of the Kafirs themselves than for the safety of the British subjects inhabiting the frontier districts of the colony, that British authority should be established in at least a part of Kafraria, I am of opinion that instead of annexing it for that purpose to the British dominions either as a new colony or as an extension of the existing colony of the Cape of Good Hope, I am inclined to believe that the object in view would be best accomplished by requiring the chiefs and their tribes to acknowledge the Queen as the protector of their nation, and to receive a British officer as the commander-in-chief of all their national forces. The native chiefs, whose present authority should, as far as possible, be supported, should be made subordinate

¹ In actual fact Sir Harry Smith deemed it necessary to annex the whole of Kaffraria up to the Kei, and Lord Grey made no objection.

in the civil as well as in the military affairs of the whole people to the British officer so appointed, upon whom I would propose to confer the title of Commandant of Kafraria.

In order to arm a British Commandant of Kafraria with the means of making his authority at once popular and respected, I conceive it would be necessary that some few commanding positions in the country should be occupied by British or Colonial troops. With this support the employment of the more friendly or trustworthy of the native chiefs as subordinate commandants would probably be found practicable, especially as I should propose to grant to them some small stipends, and to assign to them such distinctions, titular and ornamental, as would enlist their vanity in our support. But further, I should contemplate the enrolment of Kafir troops under European officers, and the occasional, perhaps the habitual employment of them in the western districts of the colony, as real though unavowed hostages for the tranquility of their kindred and connections. By such means the Native or Hottentot troops, now maintained for the defence of the colony, might be set free for service in Kafraria.

I entertain considerable doubts whether, for the establishment of the mode of government I have now described, it would be advisable that the late treaties should be replaced by any new compacts with the tribes so brought under subjection. Instead of attempting to define by the words of a treaty the respective rights and duties of the protecting power and of the subject tribes, it would probably be better to trust to a general understanding that the British authority is to be supreme and to be in all cases implicitly obeyed. In like manner I should anticipate little advantage from making formal treaties with any of the tribes beyond the Keiskamma. Experience has fully shown the futility of such compacts; I should therefore prefer laying down the broad general principle that, for all injuries which may be inflicted by the Kafirs, collectively or individually, on the colonists, reparation should be exacted or due punishment inflicted by the authority of the British commandant; he employing for that purpose the subordinate native commandants and the military power placed at his disposal. Equal justice would of course require a reciprocal promptitude of redress for any wrongs inflicted by the colonists on the persons or the property of the Kafirs.

I look to a military organization of the Kafir tribes under British officers as an important means of converting our hitherto hostile neighbours into a barrier against any inroads either of the emigrant Boers or of the native tribes to the east or north of our frontier. If by infusing into them the spirit of military obedience and attachment to their European leaders this end could be accomplished, the greatest deficiencies in our system of border policy would be supplied. I need scarcely remark that I do not contemplate the permanent main-

tenance of such a system of government as I have now described; on the contrary, it is most earnestly to be desired that the inhabitants of Kafraria may by degrees emerge from the barbarous habits and opinions of which they are the inheritors, and become fitted for the establishment amongst them of a more regular government, in which the exercise of authority should be subjected to those checks and limitations to which in civilized countries it is subjected with so much advantage.

I purposely limit myself to these very brief and general indications of my views, because I am perfectly aware that, in reducing them to practice, difficulties may arise which I cannot foresee, and that, even if the general principles should be found practicable, all the consequent details must be considered and matured on the spot. It would therefore answer no useful purpose to advance further in the suggestion or discussion of the measures to be taken. Their ultimate end and object must of course be to prevent the renewal of hostilities, and to affect this end not by terror or violence, or injustice, but by such methods as may, if possible, obtain the willing assent and cordial co-operation of the Kafirs themselves.

But, with a view to such an assent and co-operation, it is indispensable that the authority to be acquired over them should be connected with and sustained by a systematic and earnest endeavour to diffuse among them religious knowledge, moral instruction, and an acquaintance with the arts of a civilized life. In these labours the missionaries resident in Kafraria would be found the most effective and cordial associates. In concurrence with them, you would probably be able to devise some scheme for these purposes; and to any plans of that nature which might be well and maturely considered, Her Majesty's Government would render all the aid and countenance in their power.

With a view to the peace of the country thus to be acquired, and to the improvement of its inhabitants, it will be necessary to prevent the settlement among them of any cattle-farmers of European birth or origin, and more especially of the emigrant Boers. On the other hand, the settlement in the country of Europeans employing themselves there in any mechanical arts, especially in the arts of agriculture, and distinct from pasturage, would probably be advantageous. But in order to derive the anticipated advantage from it, care must be taken to arrest as far as possible whatever might generate antipathies and conflicts of race, and all the teachers of youth should be induced and required to the utmost possible extent to instruct them in the use of the English language, and then to make that language the medium of instruction. Every attempt to reduce the Kafir tongue to writing as a medium of instruction should be carefully avoided and discouraged.

In all the measures which you will have to adopt, you will not, of

course, overlook the extreme importance of confining within the narrowest limits the demand which it may be necessary to make upon the revenue either of the mother country or of the colony of the Cape of Good Hope. In the first instance I fear that it will hardly be possible to derive from the Kafir tribes themselves the pecuniary means which will be wanted for the effective organization of the authority to which they are to be subjected; the colony for the protection of which the charge is incurred ought in that case to provide for it, were it not that the exhaustion occasioned by the calamities of the war may too probably render the Colonial Treasury unequal to the burthen of even a small additional expense. You will therefore consider yourself authorized to draw from the military chest such sums as you may find absolutely indispensable for organizing the Government of Kafraria. I trust, however, that when once organized you may be able to find the means of creating a public revenue in the district sufficient to meet the very moderate expense of such a Government as I have contemplated. Besides the obvious justice and policy of preventing Kafraria from being a burthen either upon this country or upon the colony of the Cape, I believe that calling upon the Kafirs themselves to provide for the cost of their own Government would be by no means without advantage as giving them a stimulus to industry, provided that the contributions required from them were both moderate in amount and judicious in the mode of their imposition. Your experience in the administration of some of the wilder districts of India will, I doubt not, greatly assist you in judging how men in a very rude state of society can most conveniently be subjected to the burthen of taxation.

14

DESPATCH FROM SIR H. G. SMITH TO LORD GREY
(February 3, 1848) [EXTRACT]

(*P. P.*, 1847-8, xliii.)

Modern history, as far as I am aware, presents no parallel of thousands of a nation exiling themselves from the precincts even of the capital, with their families, their herds, their flocks, and their property of every description; abandoning at once the interests of the land of their nativity and that of their forefathers, and planting themselves on a doubtful tenure in a country possessed by barbarians. The latter at first readily received them, taking cattle in exchange for land, or letting it to them on nominal rather than actual leases. The occupants became subsequently overbearing, and spread themselves out without permission; and hence arose the contentions which ended in a species of warfare, in which the British Government, in 1845, deemed it essential and just by force of arms to interfere. The measures and treaties set forth in the Despatches of August 1, 1845,

of Sir Peregrine Maitland, the then Governor of this colony, described the result.¹

So soon as fortuitous circumstances enabled me to arrange amicably, and, I trust, upon a permanent basis the affairs of our possessions in South Africa, my attention was naturally turned to the excitement and disorganization which existed in the territory of the emigrants alluded to. I was exhorted from within the colony to visit these deluded men, and, invited by themselves, to appear among them; and upon my doing so, my reception was of so cordial a nature, and so firm my conviction from observation of the necessity of fixing under some sort of rule, obedience, and government, thousands of persons, the great majority of whom (although there are many who style themselves patriots) are in their hearts loyal, and attached to Her Majesty and the Government of the colony, that I am induced to believe, that as the case I have described exhibits no parallel, so do the measures adopted stand alone as regards the peculiarity of their nature. If in a matter involving the interests of so many thousands of men, women, and children, and their present and future prospects, the policy which I have pursued tends to promote their welfare, temporal and eternal, I feel confident of the approbation of your Lordship and of the Government, and of the confirmation of Her Majesty. Many of these people have themselves said to me, 'Look around you, Sir; we are under no authority—no government. You see the barbarian provided with ministers and teachers of the gospel, schools, &c., while we, in consequence of our own voluntary expatriation, cannot even marry or bury our dead, and must eventually fall back to savage life; we cannot return to the colony, our property there is sold, and our means here are nearly exhausted by the expenses which attended our emigration: our hopes rest entirely upon your measures.' I have therefore, on the base of the treaties under date June, 1845, amended that concluded with Adam Kok, the Griqua captain, as shown by the Enclosure marked No. 1. I have also entered into one, marked No. 2, with the chief Moshesh (who

¹ Sir Peregrine Maitland was Governor of the Cape from the end of 1843 until the end of 1846, when he was superseded by Sir H. Pottinger on the ground that the conduct of the Kaffir War required a younger and more vigorous man. He had previously been Lieutenant-Governor of Upper Canada from 1818 to 1828, and of Nova Scotia from 1828 to 1832. He was a well-intentioned but narrow-minded man, whose advancement was probably due to his connexion by marriage with the Duke of Richmond: the real power while he was Governor of the Cape was undoubtedly in the hands of the Colonial Secretary, Montagu (see above, p. 108, note 2).

In the despatch here referred to Maitland proposed that the sovereignty of Adam Kok, the leading Griqua chief of the Orange River district, with whom there was already a treaty of alliance, should be recognized, but that Kok's territory should be divided into native and European zones. The European zone was to be administered by a British Resident, armed with a commission under the Cape of Good Hope Punishment Act, but in other respects nominally the agent of Adam Kok. In reality, of course, Kok's authority was a mere shadow. The arrangements were accepted without enthusiasm by the Colonial Office.

declines receiving any portion of the quit rents); and with the various other minor chiefs I have conferred equally to their satisfaction. I may here mention, that the chief Moshesh has under him, according to the French missionary, Monsieur Casalie, a population of 80,000, inhabiting for the most part the mountainous portion of his territory. Though uneducated, he is a very superior man, possessing a strong mind adapted for government, and by his own abilities has improved his power and his territory. I was particularly struck with him; his dress somewhat resembling that of a French general officer, and his views, comprehensive perception, and liberality of sentiment, doing honour to his position. Yet with all this, and his encouragement of the missionaries, he has not, I regret to say, adopted the Christian faith. Having ascertained his sentiments and those of the other chiefs, I issued, as High Commissioner, the Proclamation annexed, and marked No. 3. The organization and management of these emigrant farmers I have no doubt of effecting; and I trust to see them very shortly possessing churches, ministers, and schools. I cannot conceive a situation more distressing to witness than that of thousands of these our countrymen, many of them (although there is a strong party of so-called patriots) regretting the steps they have taken, bemoaning their prospects spiritual and temporal, and praying to be restored to the laws of the colony; and if an attempt to meet their wishes has been made in such a way as to tend rather to the advantage than the injury of the native chiefs who tolerated this migration, in some instances beneficial to them, in others the reverse, the fostering hand of authority has, I hope, been judiciously extended; and however bold the measure may be regarded, I trust that, upon a full view of the subject, it may be looked upon as the alternative which this unparalleled case in history demanded.

The actual state of things, as described in the despatch of Sir Peregrine Maitland, of the 1st August, 1845, is little altered by the present arrangements. The sovereignty of Her Majesty was at that period virtually, if not actually, extended over the dominions of these native chiefs by the powers vested in the British Resident at Bloem Fontein, the step now taken makes that sovereignty absolute, and regarded with respect. On the one hand, it gives the emigrant an interest in the soil which he cultivates, which he previously held on a doubtful tenure of 40 years duration, and which he was consequently loth to improve; while he almost desponded for the prospects of his children. On the other hand, the native chiefs are protected and gratified, all exclaiming that the arrangement is a good one. A jealousy must ever exist, where the paramount authority is not absolute and defined; and among them, each would wish to be the sovereign if he could; but all feelings of this nature are at once banished by the establishment of the paramount power of Her Majesty.

It is, as your Lordship is well aware, a most difficult matter, and one of which history affords no example, to keep under rule a number of human beings, differing from one another in every respect so completely as the inhabitants of the country which I have described, in such a manner as to preserve the civilization of the one party, to promote that of the other, and place the whole in a condition worthy of their common humanity. The true and only way to make civil society merit its name, is to give its members an interest in the soil, and in the management of their own concerns, by clearly defining the limits of possession.

My position has been analogous to that of every Governor-General who has proceeded to India. All have been fully impressed with the weakness of that policy which extended the Company's possessions; and yet few, if any, especially the men of more gifted talents, have ever resigned their government without having done that, which however greatly to be condemned by the theory of policy, circumstances demanded and imperatively imposed upon them. Such has been my case.

The security of all countries within, depends not only upon their sound internal condition, but upon their security from without; and the existence of a relationship on the borders, calculated to inspire confidence. For this reason, I brought British Kafraria under the protection of Her Majesty, enforcing that protection by military occupation; and beyond the Orange river, I have proclaimed the sovereignty of the Queen, because it affected not only the well-being of the colony, but the interests and welfare of so many thousands of Her Majesty's (in their hearts) loyal subjects, over whom a succession of singular circumstances have exercised their baneful influence, and led astray the minds of men, for whose loyalty and good faith I now pledge myself, and who have sought to be restored to Her Majesty's favour, protection, rule, and sovereignty. Such is the case as regards the British subjects; with respect to the natives, I can safely assert, that the measure conduces to their benefit and protection, of which they are fully sensible.

The power vested in me upon your Lordship's recommendation, I regard as a trust confided in me, to enable me to do good; and most fervently do I rest in the hope, that my desire, surrounded as I have been by a peculiarity of circumstances, has been guided by prudence.

The machinery of the government of these emigrants shall receive as much attention as I can bestow, its entire expense falling upon themselves; and any and all surplus of their revenue being reserved for employment in their general welfare. The colonial revenue will not be diminished—the treasury will on the contrary, be benefited by the additional impulse which will be given to commerce, and the consequent increase of the customs, a demand for manufactures being the result of social improvement.

I hope in a few weeks to be at the seat of government, where I can best organize and carry out the execution of the bold outline which I have adopted.

15

MINUTE OF GREY

(*C. O.* 48/284: *P. R. O.*)

The measures reported in these despatches¹ are calculated to excite some alarm, but the policy upon which Sir H. Smith has acted, though daring and probably dangerous, is at the same time vigorous and founded upon very large views; there appears also to be good ground for his assertion that the adoption of this policy was imposed upon him by absolute necessity. I certainly should have preferred that the British territory in South Africa should have been contracted instead of being enlarged, but I am inclined to believe that practically its enlargement was inevitable.—Without the interposition in some shape or other of British authority, the extensive regions bordering on the Colonial territory would have been given up to anarchy and bloodshed, and these disorders must have extended within the colonial boundary and occasioned in our territory constant insecurity and disorder. To avert this Sir P. Maitland had been compelled to appoint an officer to exercise such extensive powers beyond the boundary as virtually to amount to an exercise of sovereignty, and such being the case I think it may fairly be inferred that it was better that this sovereignty should be openly and avowedly assumed and the means thus obtained of more perfectly organizing the system of government adopted for the establishment of security.

Assuming this necessity to have existed, the measures of Sir H. Smith appear well adapted to the great end of rendering this extension of territory the source of as little inconvenient responsibility as possible.—The principle upon which he has acted is the wise one of not attempting to create a complete system of government such as would be adapted to a more advanced state of society, but he has skilfully endeavoured to give somewhat more regularity and greater strength to that rude system of Government which has grown up of itself amongst these people from the necessity of their position, and has merely provided for giving them the assistance which they really required chiefly for the purpose of settling their disputes amongst themselves by the interposition of an authority to which all the different races of men who are brought into such singular relations with each other look up with respect.—But the management of their own concerns—together with the duty of providing for their own defence and for the payment of the expenses of that system of Gov^t. which is established among them is thrown entirely upon the emigrant

¹ Two other despatches besides the preceding one are here commented upon.

boors and the native tribes among whom they have settled.—This is a policy which upon the whole I believe to have been the best that could have been adopted and which at all events having been adopted it is obviously impossible now to abandon—all that remains to be done therefore is to give it the best chance of success by supporting Sir H. Smith in what he has done. The draft of a despatch must therefore be prepared sanctioning the measures which have been adopted on the ground of reliance on Sir H. S.'s judgment and of the necessity of the case giving the reasons I have stated for believing that if that necessity really existed no better course c^d have been adopted, and repeating the distinct warning that this country must not be held in any way responsible for the protection of the persons who have chosen to establish themselves in these wild and distant regions and that they must be contented with such rude institutions and such means of defence as they can themselves provide and afford the means of paying for.

G. 2/[June 1848].

16

DESPATCH FROM GREY TO SMITH

(December 10, 1847) [EXTRACT]

(*P.P.*, 1847–8, xlii.)

The report of the Commissioners¹ I regard as a very able document, and if Her Majesty's Government were prepared, without reference to the cost of such an attempt, to recommend to Parliament that provision should be made for adopting the most effectual means of bringing this part of the British dominions as speedily as possible into the condition of a civilized and well-ordered community, I should be prepared to sanction the adoption of a very large portion at least of the recommendations of the Commissioners. But the question of expense cannot be thus disregarded; whilst therefore I am fully sensible of the importance of the objects the Commissioners have had in view in the measure they have advised, still, looking to the interests of the British empire as a whole, and to the heavy demands from so many different quarters upon the imperial treasury, it is my duty, at once and distinctly, to discountenance the expectation that any plans for the improvement of the Natal district, which would involve large expense to be provided for by Parliament, can be adopted.

The local authorities must clearly understand that it is absolutely

¹ These Commissioners for the Location of the Native Tribes were appointed in 1846. The most important member of the Commission was Theophilus Shepstone. The report proposed that the natives should be assigned to locations, each under a resident agent of the Government supported by native police under a European officer.

necessary that they should confine their views to the accomplishment of such gradual improvements in the social state of the district as may be introduced without looking to the mother country for pecuniary assistance to more than a very moderate extent. The maintenance of no very large military force for the support of the authority of the Government, and to aid the inhabitants in defending themselves, is the only charge which I am prepared to recommend that Parliament should be asked to provide for Natal; the expenditure incurred for other purposes must be provided for from such funds as can be raised within the settlement.

The adoption of this as the ruling principle of the policy of Her Majesty's Government, necessarily leads to the conclusion that the attempt to subject a large native population, now collected within the limits of the settlement, to the regular administration of British law must be abandoned, since, even in the absence of the estimate called for by Sir H. Pottinger, I can hardly doubt that the cost of such an establishment, as is recommended by the Commissioners for this purpose, would far exceed any means of payment which could at present be provided within the settlement; while, at the same time, I do not conceive that a smaller and less effective establishment could be expected to accomplish the object in view.

But if the regular administration of justice according to the ideas of civilized nations cannot immediately be provided for amongst the native inhabitants of the settlement, it follows that they must be subjected to some other kind of authority, since it is obvious that those who have hitherto been under a rule of despotic severity cannot without extreme danger be emancipated from all control. The only mode of meeting this difficulty which suggests itself to me is that of abstaining from any sudden or violent interference with the authority exercised over these people by their own chiefs.

It should be expressly declared to the inhabitants of Natal that in assuming the sovereignty of the district, the Queen has not interfered with or abrogated any law, custom, or usage prevailing among them antecedently to the British rule, save only such laws, customs, and usages as are abhorrent from and opposed to the general principles of humanity and decency recognized throughout the whole civilized world; and further, that the Queen has not interfered with or abrogated the powers which the law, custom, and usages of the inhabitants vested in the chiefs or in any persons in authority among them, but that in all transactions between themselves and in all crimes committed by any of them against the persons or property of those of their own race, the natives will be permitted (subject to the qualification already mentioned) to administer justice towards each other as they had been used to do in former times. This implies that some control should be exercised over the chiefs, in order to restrain them from those acts of cruelty and tyranny which are so common among

savages, but which cannot be tolerated even amongst them whilst living under the protection of a civilized nation.

Practically, however, this control should be very sparingly exercised in order that the power of the chiefs (which it is an object of the utmost importance for the present to sustain) may not be impaired, and that they may not be lowered in the eyes of their tribes. Their maintaining a strong authority affords the only means by which in the actual state of things absolute anarchy and confusion can be averted, and it would therefore be advisable to abstain from examining too minutely into the manner in which the chiefs may rule over their tribes, even though this should unfortunately allow of the existence of much oppression, and the commission of many acts highly repugnant to our notions of justice and humanity.

By degrees, as the means of the colonial government of maintaining a larger and more effective establishment increase, and as the people themselves become more familiar with the ideas and habits of civilized life, and it is to be hoped with the precepts of Christianity, a greater degree of interference may be exercised and a regular administration of the law ultimately introduced.

From the very first however there are some checks upon the authority of the chiefs which, I trust, it would be practicable to enforce; the power of inflicting capital punishments, if not altogether taken away, should be restrained, and the infliction of any punishment at all on those accused of witchcraft or neglect of their religious observances should be most strictly prohibited.

In the instructions which I hope shortly to be able to transmit to you, for the officer administering the government of Natal, it is proposed that Her Majesty's pleasure thus far to recognise the authority of the chiefs should be distinctly declared, while at the same time a power will be reserved of progressively amending the laws of the natives, and bringing them more directly under the same system of administration with the inhabitants of the colony of European origin. In the exercise of this power it will be your duty by degrees to cause the most oppressive of the native laws to be repealed, and plain and simple rules, consistent with natural justice, to be substituted for them, remembering, however, that this process to be successful must be exceedingly gradual; it is useless to make an improvement of the laws precede improvements in the capacity of those for whom they are made, to understand them; the proper mode therefore of proceeding, is to take care that improvement is always progressive, and that abuses and bad customs are attacked not in the mass but in detail. Occasions should be seized whenever, in particular instances, a native law or custom has produced results which are felt to be oppressive by the people themselves, or when the want of some plain rule has been experienced to decide some point in dispute, to make a new law to meet the case.

In this manner, by degrees, a more just system of law suited to the state of society will be created, while at the same time the people will be taught to understand it.

While the internal government of the tribes is thus carried on by the chiefs, war between different chiefs, within the limits of the settlement, must be absolutely prohibited, and they must be required to submit all disputes that may arise to the arbitration and decision of the Colonial authorities. In this manner an approach at least will be made to the establishment of security for person and property, and it is to the effects of that security in promoting industry and in favouring the efforts which must be made to educate the rising generation, that we must mainly trust for the accomplishment of real improvement.

To effect this object the Missionaries will be indispensable auxiliaries to the Government—for it is obviously impossible to expect these barbarous tribes to become civilized, unless they are converted to Christianity. I have no doubt that teaching them the arts of civilized life, as recommended by the Commissioners, will promote their conversion; it is highly important, therefore, that schools should be encouraged as much as possible, and that these schools should be of an industrial character. The education of the children in the arts of industry is hardly less important, with a view to their being raised in the scale of civilization, than their mere intellectual improvement, while their labour, if well managed, ought to contribute very materially to the support of the establishments.

Another object closely connected with the above, which the Commissioners have very justly pointed out as requiring attention, is the formation of good roads; this I conceive to be of the utmost importance, not only for military purposes but also for the encouragement of industry.

To accomplish these objects, and to provide for the safety of the district, both a revenue and a military force (to some extent) are indispensable, though it is necessary, and I believe practicable, to keep both the expenditure and the demand for military force within moderate limits.

With regard to revenue, the duties upon imports, if moderate, will, no doubt, yield an income, which though not perhaps very large in amount, will be of considerable importance, and will gradually increase as the habits and tastes of civilized life become more general. But in addition to this source of revenue I have no doubt that the tribes which settle within our boundaries ought to be required to pay more directly for the protection they there receive.

With this view an assessment upon cattle, or on land, a measure which I recommended to the consideration of your predecessor in my Despatch of the 4th of December, No. 3, is by far the best resource which occurs to me.

All land occupied, and cattle possessed, should be subject to a

moderate tax or assessment. These taxes should of course be payable by Europeans, as well as by natives, and should have the object not only of raising a revenue, but also of checking the tendency to which I adverted in that Despatch towards a too exclusive direction of industry to the rearing and feeding of cattle. The present papers furnish new and striking evidence, to show that this is a tendency which it would be highly advisable to discourage.

If the natives cannot pay such an assessment in money they should be required to do so in kind, always however giving them the option of paying in money, if they prefer it, and at a rate which shall make it their interest to do so; it would be no small step in their advance towards civilization, to learn the use and convenience of money. Whenever such a tax is imposed the chiefs should be made responsible for the payments required from their tribes, and none should be allowed to remain within the district who should refuse or fail to pay in this manner for the protection afforded to them. Out of the revenue so collected by them the chiefs should be allowed moderate stipends for their services to the Government.

17

REPORT OF SHEPSTONE (August 14, 1848)

[EXTRACTS]

(*P. P.*, 1850, xxxviii.)

There is a very large proportion of the native inhabitants of this district, . . . without any hereditary head or chiefs; many of these I have temporarily attached to the most considerable chief in the neighbourhood. In almost all cases of dispute, however, these chiefs have either declined to decide, or otherwise decided unjustly, because one party of the litigants did not belong to their clans; and, consequently, their management, as universally sought by chiefs and people, has been direct from me.

A great majority of this class of natives would therefore be deprived of any organ of control, or management, if the chiefs are made the sole rulers of the native population; indeed, I estimate one third, or at most one-half, would be only provided for.

At the commencement every decision of the chiefs, without exception, was appealed from by the losing party; and to check this as much as possible, and keep down the overwhelming amount of business that would thus accrue, the original decisions have been confirmed where manifest injustice has not been the result.

In cases that have been reversed on this account, the chief has always sent a person to represent the grounds of his conduct, and has invariably afterwards, by special messengers, expressed his concurrence in the reversal, and the grounds on which it was based; adding, 'We are to be taught, and you are the proper person to teach

us.' I never knew an instance of the smallest feeling of resentment being manifested in consequence, and the decision thus given, has been considered final. . . .

As a class, the natives look upon themselves as far inferior to the white inhabitants, whom circumstances have taught to view as their natural superiors and masters. . . .

From what I have already shown, it is manifest that a proclamation declaring, 'that in assuming the sovereignty of Natal, the British Government had not interfered with or abrogated any law, custom, or usage prevailing among the inhabitants previously to that event, with the certain exceptions named; and that it had not interfered with or abrogated the powers which the laws, customs, or usages vested in the chiefs or in any other person in authority among them,' would be a step directly retrograde,¹ inasmuch as such measure would restore to the chiefs, unsought by them, the dangerous prerogatives they have already voluntarily surrendered to the Government, which is their only safe repository, and would at once emancipate them from all control by the Government; except that of the purely political nature, because, by their laws, customs, and usages, the power of the chief is absolute and independent over their own tribes, and consequently liable to the most dangerous exercise; while, on the other hand, the majority of the population, deprived of all control whatever, would be thrown into a state of anarchy and confusion, subject to the arbitrary caprice of any neighbouring chief who enjoys hereditary right. In addition to this, one of the principal and most highly-appreciated boons conferred upon the native by the supervision of a civilized Government,—that of a wholesome restraint upon the unbridled wills of their chiefs, is annihilated, the result of which would be the desertion by the common people of the locations, even when formed, to escape the tyranny they will no longer submit to, and the over-running of the farms where its influence cannot reach them. . . .

Every reflecting colonist sees that our laws are inapplicable to their circumstances, and would only secure to them impunity in the commission of crime; whilst theirs possess one or two characteristic principles which are necessary to their management, whilst they are foreign to the principles of our jurisprudence.

I am of opinion, that every native of the district should be compelled to reside within the limits of one of the localities wherein the laws suited to his condition are in force. From this I, of course, exclude all such as may be in service, or under the immediate supervision of responsible colonists.

It is essential that the natives in every location should look to the

¹ The issue of such a proclamation was directed by the Royal Instructions of March 8, 1848, based on the views outlined by Lord Grey in No. 16. The exception named was 'so far as the same may be repugnant to the general principles of humanity, recognized throughout the whole civilized world'.

seat of the District Government as its supreme head, and that every measure be avoided which might tend to encourage ideas of absolute or independent clanship.

The tribal distinctions that obtain among them are highly useful in managing them in detail, and these are sufficiently preserved by the tribal heads governing them, in the name and on behalf of the Government, on such general principles as may be applied to the whole.

It appears to me also desirable, that natives should understand that the moment they leave the locations to which they belong, and enter the service of colonists, or live upon a farm, they become amenable to the laws of the district in respect to such residence or service, and to the magistrates appointed by Government for giving them effect, and that the exertions of these officers to that end should moreover be co-operated with by the chiefs or other authorities within the location as well.

To place them under the 'special control' contemplated by the Royal instructions, and of the absolute necessity of which there can be no doubt; it appears to me that each location or mass of natives should be controlled directly from the seat of Government by an officer representing the Government to the natives generally; that the jurisdiction of this officer should extend over all the natives in the district residing in masses or locations; that he should govern them according to the principles of their own laws, customs, and usages, with which he must of course be intimately acquainted; that the various chiefs, and, where there is no chief, the persons appointed to act as such, should be accountable to the Government through him for the manner in which they govern their respective tribes; that he should also have the power, acting on behalf of an enlightened Government, to remedy cases of glaring injustice which will doubtless occasionally present themselves for redress. This officer should have the permanent command of their national or tribal forces, in order that upon the occurrence of any emergency all may be aware whose orders they are to obey, and to feel that, however separate and distinct they may be in origin and among themselves, they are nevertheless united under the Government they may be called upon to defend.

Acting on behalf of the Government under the somewhat anomalous title of 'Diplomatic Agent,' I have, unassisted, and for two and a half years, discharged the various duties above enumerated by the common consent of all chiefs and people, and by permission of his Honour the Lieut.-Governor,¹ until some settled form of Government should be devised for them, and my experience and the success I have met with induce me to recommend the continuance of the system I have described under the sanction and authority of a legal enactment.

My only warrant up to this moment has been the common consent of

¹ The Lieutenant-Governor was Mr. Martin West, previously Civil Commissioner of Albany. He continued in office until his death in 1849.

the native chiefs and people, and the toleration of his Honour's Government; but it is a responsibility of too great magnitude to be borne by an individual for a moment longer than the circumstances absolutely demand without a more substantial and sufficient guarantee.

His Honour's Government being now invested with legislative powers by Her Majesty the Queen, I trust that this serious difficulty may be met and provided for, and the native inhabitants of this district placed in such a position as will ensure their efficient control, without which it would be in vain to hope for their advancement in the scale of humanity.

I have, &c.,

(signed) T. SHEPSTONE,
Diplomatic Agent.

18

DESPATCH FROM GREY TO SMITH

(November 30, 1849) [EXTRACT]

(*P. P.*, 1850, xxxviii.)

One of the proposals made, in order apparently to meet these difficulties,¹ is to establish a very limited number of locations with a reduced territory for each, and to remove the rest of the natives beyond the colonial boundary, still maintaining a control over them in the event of the chief, Faku, giving his consent to their settling on lands claimed by him. I cannot sanction a proposal to which there are so many objections. I am of opinion that permanent locations of sufficient extent should be established within the colony; and, that, in selecting the sites of these locations, sufficient intervals should be left between each of them for the spread of white settlements; each European emigrant would thus have it in his power to draw supplies of labour from the location in his more immediate proximity. I conceive that it would be no objection to this mode of proceeding, that it would be difficult or impossible to assign to the natives such locations of an extent sufficient for their support as a pastoral people, or at least as a people depending mainly for support on their flocks and herds. I regard it, on the contrary, as desirable that these people should be placed in circumstances in which they should find regular industry necessary for their subsistence.

I am aware that in these latter recommendations, I am differing

¹ The difficulties had arisen out of the proclamation of May 12, 1843 (above, No. 10), with its requirement of twelve months' previous occupation to establish a claim to a grant of land, and the long and involved investigations into titles necessitated by that proclamation, by the relaxations subsequently made in its terms, and by the emigration of many of the Boer claimants. At last in 1850 Lieutenant-Governor Pine effected a settlement and put an end to the uncertainties which had so long complicated the land question and the native question alike.

from yourself, and from some of the local authorities at Natal; but if the policy of isolating the natives should be adopted, it would too probably end, sooner or later, in their expulsion or extermination when the European inhabitants should increase in numbers so as to require additional space. No Government would be strong enough to save them from this fate. And the experience of North America and Australia shows what is the result of endeavouring thus to isolate the barbarous tribes occupying lands which are to be settled by civilized men, while the opposite policy pursued by the Government of New Zealand,¹ holds out the hope at least of a result more consonant with feelings of humanity. The separation of the races is no doubt the policy which, in the first instance, presents the fewest difficulties and dangers, but it is necessary to look to the ultimate consequences of what is done.

It is of the greatest importance that the locations of the natives should be most accurately defined, and their villages so arranged at different points of these locations, that they may be, as nearly as possible, equidistant from the settlements of the Europeans, so that, in course of time, the two races may, by their mutual wants, become amalgamated. Every encouragement should also be afforded to the younger natives to become servants in the families of the European settlers. In this intercourse, which would gradually become closer, the natives will derive benefit from example and instruction, which they could not otherwise obtain, while, on the other hand, the Government may avail themselves of the assistance of the Europeans, settled in the vicinity of the locations, in managing their local expenditure.

19

LEADING ARTICLE OF *THE TIMES*

(March 7, 1851) [EXTRACT]

We regret to announce to our readers the commencement of another Caffre war.² . . . It is only due to the authorities of the Cape to state, that whether they may have been deficient in proper vigilance or not—a question on which, in our present state of information, we offer no opinion—at any rate they do not appear to have provoked this outbreak by any irritating or overbearing conduct. Like the insurrection at Cabul,³ the blow seems to have fallen at

¹ See below, Section VI B, No. 11.

² War had broken out on Dec. 24, 1851, when the Kaffirs attacked a British patrol. On the following day they surprised the settlements of military pensioners on the Tyumie River and murdered the inhabitants. But it was some weeks, not 'three days' (see below), after the conference later referred to.

³ A reference to the rising of November 2, 1841, which was followed in January 1842 by the retreat of the British garrison through the Khyber Pass.

a moment when every confidence was felt that no such catastrophe was impending. The native chiefs had recently met the Governor in conference, and had accepted from his nomination a new Sovereign in the place of their deposed chief, Sandilli. Three days after this the outbreak began; thus adding another proof that, with all our superiority in knowledge and civilization, we are easily outwitted and outmanœuvred by the diplomacy of the untutored savage.

The first outbreak being over, we cannot doubt that the united efforts of the troops and colonists—guided by the skill and experience of the hardy soldier who now fills the office of Governor—will drive back in headlong rout the savage invaders, and establish the foundations of a lasting peace. But the question which interests the people of this country is, 'Who is to pay for the triumphs we are to achieve?' The last Caffre war cost this country about two millions of money, just the amount of the surplus which the Chancellor of the Exchequer now has at his disposal, and in the proposed appropriation of which he has encountered such multifarious opposition. We think, however, that the most inveterate opponent of Sir Charles Wood and his financial scheme¹ would rather see the money appropriated under his auspices than in paying the expenses of another Caffre war. We therefore lose not a moment in protesting, on behalf of the people of England, that the coming campaign is not to be fought at their expense, and that whatever cost is to be incurred, it is out of the colonial Treasury that it must be defrayed. The Cape was unwilling to receive our convicts, and we yielded to her resistance, with a bad grace certainly, but with enough of complaisance to show that we recognized, though tardily, her right to dispose of her own affairs.² The Cape was anxious for a constitution, and we have given her one, which has been kept in abeyance up to this time by the resistance of the colonial officials to a new *régime*, in which they perceive the downfall of their order, and by the errors of Lord Grey, but not by any fault of the House of Commons. We have, in fact, during the last two years, evinced every disposition to relieve the Cape from a state of tutelage, and if the jealousy of the Colonial-office shall be found to have intercepted in this case, as in that of Australia, any necessary powers of self-government, we have no doubt that Parliament will be prepared to do justice.

Under these circumstances it is only fair that any expenses beyond the support of the troops already in the colony should be borne out

¹ Sir Charles Wood, afterwards Viscount Halifax, was Chancellor of the Exchequer from 1846 to 1852. In his Budget of 1851 he proposed to lower the duties on coffee and on foreign timber, and to substitute a house tax for the unpopular window tax. It was claimed by some of his opponents that by not budgeting for a surplus he could have abolished the window tax without imposing a substitute: and later, in spite of the Kaffir War, he did reduce the amount of the house tax.

² On the Cape convict affair, see above, Section III, No. 14: on the constitution see above, p. 5.

of the colonial funds. Those who are anxious to have a government and a policy of their own should be prepared to take upon themselves those duties which self-government and independent political existence imply. Foremost among those duties is the provision for their own defence. If the colonies be involved in war with any foreign Power by imperial policy, it is but just that imperial arms should protect them. But a private and peculiar war, like that now raging at the Cape, seems to fall fairly within the province of the local Government to manage, and of the local Exchequer to support. The truth is, moreover, that this country cannot afford to indulge her remote colonies in the luxury of wars with their neighbours, to be carried on at her expense. It is generally believed that a large portion of the two millions paid for the last Caffre war found its way into the pockets of jobbers, and that the colony could well afford a similar evil if sure of a similar indemnification. It has often been calculated that Canada was enriched by her outbreak, and that the blood our soldiers shed was amply compensated by the money they circulated. The settlers in New Zealand contrived to get up a war with the natives, and on the proceeds of that war, and of the enormous commissariat expenditure which succeeded it, they have subsisted, and are subsisting to this day.

We repeat it, we cannot afford to encourage this extravagant taste. War is an expensive luxury at all times, but never so costly as when it is carried on by one party, and paid for by another. Entertaining these opinions, it is with much regret we are reminded that the Cape colony is not yet in possession of those free institutions which were announced last year as intended for her. We may call upon the Cape, and with reason, to bear the expenses of the war carried on for her exclusive benefit; but we must not forget that we ought to have provided her with the machinery for raising the requisite taxes and bringing public opinion to bear on the conduct of hostilities. As it is, we shall call upon the colony to execute a duty which implies the existence of self-government without having provided her with the necessary powers. The expenses which the Cape will have to pay will be assessed by English officials; and, however moderate and reasonable they may be, this fact alone is sure to make them a cause of discontent and dissatisfaction. The present instance shows that it is not the colonies alone that are gainers by being intrusted with the management of their affairs, and that the home Government may most wisely surrender powers which are sure to be accompanied with more than equivalent responsibilities. It is delightful, doubtless, to regulate in an office in Downing-street the domestic affairs of the antipodes; but the people of England must remember that they purchase this intellectual treat for a few heaven-born statesmen by a needless annual outlay of some two millions, with an occasional bonus of another two millions as the cost of a Caffre war.

MEMORANDUM OF GREY [EXTRACTS]¹

(Howick Papers.)

. . . At the Cape the White settlers are strong enough to destroy the blacks but not strong enough unassisted to restrain their passion for plunder. But the Whites will not submit to be plundered and the result is clear. A Christian nation wd not be justified with this certain result before our eyes in with-drawing controul and protectⁿ. Hence the questⁿ. how our authority can be maintained in the manner least burthensome and productive of most good? . . .

No doubt it is quite true as alleged by Mr. Freeman² that in old times the policy pursued towards the Native races was one of extreme cruelty and injustice—that the system of ‘commandoes’ was one wh. led to great abuses and great oppression of the natives and that the settlers unrestrained by the Gov^t. were constantly encroaching on their savage neighbours. But though this is true it is equally so (and this Mr. Freeman overlooks) that the Kafirs are altogether unable to understand a policy of justice, and attribute all our measures founded upon this principle to weakness—That it is idle to expect them to be restrained by any such motives as respect for treaties and a sense of justice, and that nothing but a display of force can keep them in order. This after all is the nature of savage tribes—South Africa beyond the reach of the White man is one scene of violence and rapine. The Kafirs conquered from the Hottentots only a century ago the territory where by conquering them in their turn British Sovereignty is now established, and the devastating wars of Panda Chaka³ and other chieftains are well known. To expect that these fierce savages restrained by no sense whatever of religion, who delight in war and plunder, will ever live in peace close to white settlers whose wealth is a constant temptatⁿ. to them, unless they are constrained to do so, seems to me quite delusive. I believe that the successive Governors of the Cape for many years have been most anxious to treat the Kafirs with justice, and to restrain the settlers from injuring them but that the predatory spirit of these tribes has defeated all the endeavours of this kind that have been made. But

¹ This memorandum is undated, but there is internal evidence to show that it was composed shortly after a minute of April 1851 written by Sir G. Barrow of the Colonial Office.

² The Rev. J. J. Freeman, home secretary of the London Missionary Society, published in 1851 a volume entitled *A Tour in South Africa*, written from an extreme negrophil standpoint.

³ Chaka, paramount chief of the Zulus, was probably one of the greatest warriors ever produced by a savage race. He made the Zulus the foremost tribe in the whole of South Africa, and whole regions were deserted by their inhabitants. He was murdered by his brother Dingaan in 1828.

if Mr. Freeman is wrong the boers and many even of the English settlers are equally so. Though the Kafirs have been very often the aggressors, indeed generally so, it seems impossible to doubt that vengeance has often been taken upon the innocent as well as the guilty, and that in these border wars a spirit of mutual hostility grows up which leads the settlers to regard the natives very much like wild beasts and to treat them accordingly. Hence it does not seem to me that it can be left to the settlers to determine for themselves what measures sh^d. be taken for their protectⁿ., nor can I admit that it ought to be assumed that the Kafirs are irreclaimable. I have no doubt that to subdue their savage nature a strict and even a severe system of government is necessary, and that they are not to be trusted, but I see no reason to doubt that by such a system of gov^t. they may be kept in order, and that if peace is thus maintained religion, educatⁿ., and commerce will gradually civilize them. It appears to me to be the duty of this country and a duty which it is bound by the most sacred obligat^{ns}. not to shrink from performing, to endeavour to work out this result instead of deserting the responsibility we have voluntarily undertaken by acquiring dominion and settling a large body of British settlers in Southern Africa.

21

DESPATCH FROM GREY TO SMITH

(September 15, 1851) [EXTRACT]

(P. P., 1852, xxxiii.)

Downing Street, 15th September 1851.

SIR,

I have to observe, with reference to the events which have taken place in the Orange River sovereignty, that so far as I can form a judgment from the very imperfect information hitherto received, I must doubt the prudence and propriety of the course taken by Major Warden.¹ You will not fail to remember that Her Majesty's Government, in giving a very reluctant sanction to the measure by which you added this territory to Her Majesty's dominions, were mainly influenced by your report that this was generally desired by the inhabitants of the districts, who considered the establishment of British authority the only means by which disorder and bloodshed could be prevented, and a settled Government established in the territory. You were, however, distinctly informed at the time, by my despatch of the 21st of June 1848, that Her Majesty's Govern-

¹ Major H. D. Warden, of the Cape Mounted Rifles, was British Resident at Bloemfontein from 1846 to 1852. He seems to have been greatly influenced by the Wesleyan missionaries, who induced him to favour their protégés against the powerful Basuto chief Moshesh.

ment only sanctioned the course you had adopted for the sake of the inhabitants of the district, with no other object but that of meeting their wishes and promoting their welfare, and on the express condition that the whole cost of the arrangements made for these purposes was to be met by those for whose benefit they were intended. I stated to you in the above despatch, as the ground of my approval of your proceedings, that 'the tendency of these measures, if duly executed, would be to give somewhat more regularity and greater strength to that rude system of government which has grown up of itself among these people from the necessity of their position, and to provide them the assistance they really require for the purpose chiefly of settling their disputes among themselves, by the interposition of an authority to which all the different races of men whom circumstances have brought into such a singular relation with each other look up with respect. But it is essential that the management of their own concerns with the duty of providing for their own defence and for the payment of the expense of that system of government which is established among them, should be thrown entirely on the emigrant boers and on the native tribes among whom they are settled.'

The information before me (which, as I have already observed, is still very imperfect) leads me to fear that Major Warden, in the exercise of the functions assigned to him as British Resident at Bloemfontein has not sufficiently borne in mind this explanation of the nature and extent of the interference which Her Majesty's Government are prepared to exercise in the territory over which he has been appointed to watch; he has, as it would appear, failed in sufficiently impressing upon its inhabitants, whether of European or of African descent, that it was for their own advantage, not for any interest of this country, that British authority was established among them, and that upon themselves must mainly rest the responsibility and the duty of maintaining the peace of the district. I should infer from what I now learn that Major Warden had committed the great error of interfering too much in the government of the territory, and instead of merely assisting the inhabitants to govern themselves, in conformity with the instructions I have just quoted, has gradually assumed too much into his own hands the administration of its affairs, for which the inhabitants have consequently ceased to feel themselves responsible. It is only on this supposition that I can account for the backwardness of the boers and of the friendly tribes in maintaining the authority of the Resident.

I have to inform you, that if this error has been committed, it must be corrected as speedily as possible. Her Majesty's Government consider it absolutely necessary to adhere to the policy explained to you when the assumption of sovereignty in the Orange River territory was sanctioned, and to confine strictly within the limits then

described the authority to be exercised by the servants of the Crown. If the inhabitants will not support that authority, but on the contrary desire to be relieved from it, there is no British interest to be served by endeavouring to maintain it, and the sooner the force now there can be withdrawn the better; the check which would be given to the progress of civilization, and the anarchy and bloodshed which would too probably follow if the exercise of any authority by servants of Her Majesty in this district were to cease, would no doubt be greatly to be lamented, but on the other hand, in justice to the people of this country, it is impossible that the expense should be incurred of keeping up a force sufficient to maintain in this distant region an authority which the great majority of its inhabitants will not willingly obey and actively support.

I have therefore to instruct you to adopt the earliest and most decisive measures in your power for putting an end to any expenses to be incurred in the Orange River sovereignty, beyond what can be provided for from the resources of the district, including such a contribution from the revenue of the Cape Colony as is justly due on account of the consumption within the sovereignty of goods which have paid duty on their importation into the colonial ports. I am aware that until British Kaffraria has been reduced to complete subjection, it might be dangerous and might ultimately increase instead of diminishing the difficulties to be contended with, if any course were taken which by these barbarous people might be regarded as showing a deficiency of power in the British authorities; and also that it is absolutely necessary in any change of measures to have regard to the safety and interests of our allies. But these considerations, though they render caution necessary in retracing an erroneous course of policy, cannot afford any grounds for permanently persevering in it; and, therefore, though a consideration of the difficulties in which you may be involved in the Orange River sovereignty is one of the main reasons for sending the additional force now ordered to the Cape, you will distinctly understand that this force is not intended to afford the means of permanently governing the territory by military power; and that if the majority of the inhabitants will not support the authority of the Resident, he must be withdrawn, together with the detachment of troops hitherto kept there, as soon as this can be done with safety and with honour. In order that such a step may be taken with safety and with honour, it will be necessary in the first place that the superiority of the British arms over those by whom they have been resisted should be distinctly shown, (which the force sent out to you will, I hope, afford the means of accomplishing,) and next, as I have already observed, that the interests of our allies should be attended to. This last object will be facilitated by the large extent of fertile land which will be at your disposal in consequence of the rebellion of the Kafir tribes and of the Kat River

settlers, which will probably enable you to provide amply within easier reach of British protection for those inhabitants of the sovereignty who have been faithful to their allegiance, and who might not be able to remain there in safety without support. If this can be accomplished, I am aware of no obstacle to the relinquishment of the territory should it prove to be necessary; but at the same time, as I have observed, this would be a necessity to be greatly lamented, and, therefore, before such a step as I have contemplated is adopted, the boers as well as the principal native chiefs should be made fully to understand the views of Her Majesty's Government; and it should be ascertained whether they will or will not make the requisite exertions in order to secure a continuance of that protection which they have hitherto enjoyed, and of which it is to be apprehended that the withdrawal would end in the destruction of the less civilised race, but not without occasioning great calamities to that part of the population which would probably in the end become the sole possessors of the country.

22

SAND RIVER CONVENTION

(*P. P.*, 1852-3, lxvi.)

Minutes of a meeting held in the place of Mr. P. A. Venter, Sand River, on Friday the 16th day of January 1852, between Major W. Hogge and C. M. Owen, Esquire, Her Majesty's Assistant Commissioners for the settling and adjusting of the affairs of the eastern and north-eastern boundaries of the colony of the Cape of Good Hope¹ on the one part, and the following deputation from the emigrant farmers residing north of the Vaal River:—

A. W. J. Pretorius, Commandant General,²

H. S. Lombard, Landrost.

W. F. Joubert, Commandant General,

G. F. Kruger, Commandant,

J. U. Grobbelaar, Raadsted,

P. E. Scholtz,

P. G. Wolnaoans, Ouderling,

J. A. Van Asevegen, Veld Cornet,

F. J. Botes, Veld Cornet,

¹ Major W. S. Hogge and Mr. C. Mostyn Owen were appointed in 1851 as Assistant Commissioners to Sir Harry Smith in frontier matters: they had both had experience of South Africa in the Kaffir War of 1846-7, and Major Hogge in particular was a man of great ability. He died in July 1852.

² Andries Pretorius was, after the death of Piet Retief, undoubtedly the ablest and most influential of the Boer trekkers. He had left Natal in 1848 despite the efforts of Sir H. Smith, and had become the leader of the irreconcilables. If he had not died in 1853, the confusion which existed in the Boer Republics throughout their early years might have been much lessened.

U. F. S. Basson, Veld Cornet,
J. P. Furstenberg, Veld Cornet,
J. P. Pretorius,
J. H. Grobbelaar,
J. U. Lehman,
P. Schutte,
J. C. Kloppers,

On the other part.

The Assistant Commissioners guarantee in the fullest manner, on the part of the British Government, to the emigrant farmers beyond the Vaal River, the right to manage their own affairs, and to govern themselves, without any interference on the part of Her Majesty the Queen's Government, and that no encroachments shall be made by the said Government on the territory beyond to the north of the Vaal River, with the further assurance that the warmest wish of the British Government is to promote peace, free trade, and friendly intercourse with the emigrant farmers now inhabiting or who hereafter may inhabit that country, it being understood that this system of noninterference is binding upon both parties. Should any misunderstanding hereafter arise as to the true meaning of the words 'the Vaal River,' this question, in so far as regards the line from the source of that river over the Draakenberg, shall be settled and adjusted by commissioners chosen by both parties.

Her Majesty's Assistant Commissioners hereby disclaim all alliances whatever and with whomsoever of the coloured nations north of the Vaal River.

It is agreed that no slavery is or shall be permitted or practised in the country to the north of the Vaal River by the emigrant farmers.

Mutual facilities and liberty shall be afforded to traders and travellers on both sides of the Vaal River; it being understood that every waggon containing ammunition and fire-arms coming from the south side of the Vaal River shall produce a certificate, signed by a British magistrate or other functionary duly authorized to grant such, and which shall state the quantities of such articles contained in the said waggon, to the nearest magistrate north of the Vaal River, who shall act in the case as the regulations of the emigrant farmers direct.

It is agreed, that no objection shall be made by British authority against the emigrant boers purchasing their supplies of ammunition in any of the British colonies and possessions in South Africa; it being understood that all trade in ammunition with the native tribes is prohibited, both by the British Government and the emigrant farmers, on both sides of the Vaal River.

It is agreed, that so far as possible all criminal and other guilty parties who may fly from justice, either way across the Vaal River, shall be mutually delivered up, if such should be required, and that the British courts, as well as those of the emigrant farmers, shall be

mutually open to each other for all legitimate processes, and that summonses for witnesses sent either way across the Vaal River shall be backed by the magistrates on each side of the same respectively, to compel the attendance of such witnesses when required.

It is agreed, that certificates of marriage issued by the proper authorities of the emigrant farmers shall be held valid, and be sufficient to entitle children of such marriages to receive portions accruing to them in any British colony or possession in South Africa.

It is agreed, that any and every person now in possession of land, and residing in British territory, shall have free right and power to sell his said property, and remove unmolested across the Vaal River, and *vice versâ*; it being distinctly understood that this arrangement does not comprehend criminals, or debtors without providing for the payment of their just and lawful debts.

This done and signed at Sand River aforesaid, this 17th day of January 1852.

23

DESPATCH FROM LORD GREY TO HON. G. CATHCART¹

(February 2, 1852) [EXTRACT]

(P. P., 1852, xxxiii.)

The events of the last twenty years too clearly demonstrate the absolute necessity of a revision of the system of policy hitherto pursued on the Cape frontier, in order that the best precautions which the circumstances admit of may be taken against the periodical renewal of the grievous losses and sufferings inflicted upon the colonists, and the heavy pecuniary burden entailed on the mother country by successive Kafir wars. I have therefore to instruct you to consider with the Assistant Commissioners, who have already been sent to the Cape, the state in which affairs may be left on the termination of the war, and to prepare for the information of Her Majesty's Government and of Parliament a Report fully explaining your views as to the policy to be hereafter adopted, and the measures to which you look as being the best calculated to guard against the evils which have been experienced. In preparing such a Report, you will exercise the fullest and most unlimited discretion in recommending for the consideration of Her Majesty's Government the course which may appear the best to your own judgment, without regarding yourself

¹ The Hon. George Cathcart was a comparatively unknown man when he was appointed to succeed Sir Harry Smith at the Cape, though he was highly esteemed by the Duke of Wellington, whose A.D.C. he had been at Waterloo. His measures for bringing the Kaffir War to an end were successful, and though his later expedition against the Basutos met with a check in December, it achieved its primary object and Moshesh sued for peace. In 1854 Cathcart returned to England and received one of the principal commands in the Crimea, where he met his death at the battle of Inkerman.

as in any degree bound by the instructions which have been given or the views which have been expressed by myself or by preceding Secretaries of State to former Governors of the Cape. You will consider only what are the measures best calculated to meet the just claims and to promote the true and permanent interests of Her Majesty's subjects both in the colony and in the mother country.

In looking at the subject in this light, you will not fail to bear in mind that while it is due to those persons and their descendants who were induced with the direct sanction of Parliament to leave this country for the purpose of settling in the Eastern division of the Colony, that they should not be abandoned without aid or support in a position of so much danger, their right to look for the support of the mother country is by no means without its limits, and that it depends upon their not failing to make those exertions which may reasonably be expected for their own protection, and to conform to those rules of conduct which may be necessary for their safety. In like manner there are other considerations affecting the native races, which ought not to be lost sight of. If colonists of European descent are to be left, unsupported by the power of the mother country, to rely solely on themselves for protection from fierce barbarians with whom they are placed in immediate contact, they must also be left to the unchecked exercise of those severe measures of self-defence which a position of so much danger will naturally dictate. Experience shows that in such circumstances measures of self-defence will degenerate into indiscriminate vengeance, and will lead to the gradual extermination of the less civilized race. To avert this result (which has hitherto been the aim of our policy), and by the enforcement of order to provide for the civilization and conversion to Christianity of these barbarous tribes instead of leaving them to be destroyed, is a high and noble object well worthy of considerable sacrifice on the part of the British people. But, on the other hand, it is more than is required from them by the duties of humanity that they should submit to the necessity of indefinite expense, and of a constant renewal of such costly efforts as have lately been made, in order to prevent the strife of hostile races, and maintain peace and security in the wide regions of Southern Africa, over which British power has been asserted.

You are aware, that, beyond the very limited extent of territory required for the security of the Cape of Good Hope as a naval station, the British crown and nation have no interest whatever in maintaining any territorial dominion in Southern Africa, and that the only motives which can influence Parliament and Her Majesty's Government in doing so are that sense of the claims upon them of those of Her Majesty's faithful subjects who are inhabitants of the colony, and that philanthropic desire to promote the civilization and conversion of the tribes amongst whom they dwell, to which I have adverted. I have hitherto believed that by a proper system of management those

for whose welfare it was alone desired that British power should be maintained in this distant region might be made to understand their interest in supporting it, and that, without any expense disproportionate to the object in view, that object might be accomplished, and both the European and native races might be induced to yield obedience to the authority exercised by British officers for their benefit. This belief was encouraged by the success which for nearly three years appeared to have attended the measures adopted by Sir H. Smith, and I looked forward with confidence to the complete establishment of security by the civilizing effects of commerce and of missionary enterprise, if the tranquillity and good order which had thus long been preserved could only for a few years be continued. Unfortunately these sanguine hopes have been disappointed, and it will be a question demanding the most serious consideration, whether the attempt which has thus failed can be renewed, or whether the exercise of British authority in South Africa must not be restricted within much narrower limits than heretofore.

The answer to this most important question must greatly depend upon whether, by firm but conciliatory measures, you can allay those jealousies and animosities which have unfortunately divided the colonists, and can unite them in supporting the Government. With such united support from the colonists of European origin, I still see no reason for despairing that, by adopting a system of managing the native tribes, in which injudicious indulgence and that forbearance which savages always attribute to weakness, should be no less carefully avoided than injustice, the security of the colony might be maintained without a heavier demand on the resources of this country than Parliament would probably be prepared to sanction.

I have, &c.

(signed) GREY.

24

ADDRESS OF ORANGE RIVER DELEGATES TO SIR G. CLERK¹

(*P. P.*, 1854, xliii.)

Bloem Fontein, September 8, 1853.

To his Excellency Sir G. R. Clerk, K.C.B., Her Majesty's Special
Commissioner for the Orange River Sovereignty.

SIR,

We, the delegates elected for the several districts of the Orange River sovereignty have, as loyal and dutiful subjects, complied with

¹ Sir George Russell Clerk, after a distinguished career in India, had been appointed in 1853 as Special Commissioner for settling the affairs of the Orange River Sovereignty and handing it over to the Boers. From 1856 to 1860 he was successively Under-Secretary and Secretary to the India Board, and Permanent Under-Secretary of State for India, and he was later for many years a member of the Council of India.

the commands of Her most Gracious Majesty in assembling at the desire of Your Excellency, Her Special Commissioner, for the purpose of deliberating on such measures as may be necessary for establishing a good and orderly government in this distracted land. In compliance with your Excellency's wishes, we have elected a committee of our number, to which full authority and instructions have been given. We would not, however, by any means, have it understood that we thereby acknowledge the equity of the decision of Her Majesty's Government, or express any wish for the withdrawal of the British authority. On the contrary, we consider we have a right to claim the continued protection of Her Majesty, to whom we have ever proved ourselves loyal subjects.

We are aware that misrepresentations of the feelings of this people towards the British Government have been made, and that it has been officially stated that the inhabitants did not support the British authorities as they ought to have done.

We distinctly assert, that upon due inquiry into the circumstances alluded to, it will appear that the source of this dissatisfaction may be traced to misgovernment.

We beg, therefore, to record our dissent from the decision of Her Majesty's Government as announced by you, and to protest against the withdrawal of British protection.

On behalf of the assembly of delegates,

(signed) A. J. FRASER,

Chairman.

25

REPORT FROM CLERK TO NEWCASTLE [EXTRACT]

(*P. P.*, 1854, xliii.)

Bloem Fontein, October 8, 1853.

MY LORD DUKE,

I had the honour to address your Grace on the 1st instant. I then reported that it was proposed by the inhabitants of this village to depute persons to England to look after their interests, and that funds were being subscribed for defraying all expenses.

2. At a meeting subsequently held here, comprising Dr. Fraser, the Rev. A. Murray, Mr. Stuart, the attorney, and most of the thirteen persons who have shops here of general small merchandise, and some of whom engage in the land speculation and mortgages, the two former were chosen. The committee of the delegates, appointed when the latter terminated their consultations, is now to be re-assembled, and when that takes place this selection will no doubt be confirmed. It is intended that Messrs. Fraser and Murray shall

then proceed to the Cape, and from thence by the November steamer to England, ostensibly conveying the sentiments and opinions of the inhabitants of this territory, but in fact representing the wishes of two small sections here: one, the English speculators in land and trade, and in the consumption by British troops in quarters, but more especially when required in the field; the other, some respectable Dutch settlers. I have in a previous Despatch, stated the former to be 139 in number, and of these the proprietors who reside on their lands may be about forty. Altogether they own, or they have mortgaged *two millions and a half of acres*. This sounds like large property, but the greater part of it is desert and must always remain so, as every one must know who has had the opportunity of observing the features of this territory, and experiencing the dry climate of this interior of South Africa. It is especially among these non-resident proprietors, stirring and trafficking men and agents, never desirous and quite unqualified to sit down to an African boer's mode of life, that the disappointment which their hopes of profits from these land sales have already suffered, is aggravated by the prospect of the withdrawal of British protection. Attracted hither by 'the Friend of the Sovereignty Gazette,'¹ they find their hands full of its 'surveyed farms' with 'fertile lands' and 'water capabilities.' In dismay they now regard the intended departure of the British authorities and the British troops, as the annihilation of their schemes. These have of late years rested not really on a belief in the progress of prosperity, colonization, and Christianity, but firstly, on a reliance now regretted in the necessity for the continued presence of British troops, and on the countenance and encouragement derived from the eagerness with which the Government officials, also without any capital of their own, have entered into the system of land-jobbery; and secondly, on the efficacy of their own direct persuasions, and of the dexterous and exclusive use of the weekly and only journal, to induce other speculators in the Cape colony to embark in these projects, and if not to share in their exile, at least in whole or in part to relieve them of the burden of their bargains. The other section, whose wishes would also, I believe, be truly represented by the gentlemen deputed to England, consist of the few Dutch boers who have stood by the British authorities at all times and at all hazards, even when called upon to arm and take the field on occasions when the penetration of the majority of their fraternity has led them to discover that there was no enemy whom it was either prudent for a *bonâ fide* settler to exasperate, or even justifiable to chastise. Mr. Fraser will also represent the desires of several mercantile associations in the Cape colony, and Mr. Murray the benevolent but delusive expectations of the Church.

¹ The *Friend of the Sovereignty Gazette* was established in 1850 by the proprietors of the *Grahamstown Journal*. It was for long the only newspaper published in Bloemfontein.

3. But Messrs. Fraser and Murray will by no means represent the feelings and opinions of the majority of the settlers in this territory. The sentiments of that majority continue to be what they ever have been; they are averse to British administration, on account of wrongs which they remember to have endured under its rule in the Cape colony. I have not here heard a disrespectful word or insinuation from a boer's lips, nevertheless, I have met with only very few who have not, by some observation or another, made it apparent to me that they do not highly appreciate the foresight, the wisdom, or the efficiency of our political or administrative measures on this Orange River frontier. Withal, they are imbued with their national prepossessions in favour of self-government, and they go or they look across the river Vaal, and see their fellow exiles and countrymen living contentedly and peaceably under institutions of an independent rule based upon that principle. Nor is it with complacency they view the presence of those of the British population whose sole purpose in coming here is to speculate in land sales. They live on terms of friendship with the few who reside among them engaged in the same occupations, and evincing no disposition to overreach them; but they feel that they were the pioneers, who, having in a manner settled this country, waste as much of it still is and ever must remain, owing to its sterility or their inertness or both, can perceive no advantage to themselves in the introduction of British energy, which to their comprehension of what is passing here, aims at no permanent home or settled habits of life, but with the rare exceptions to which I have referred, is chiefly displayed as to farming, in the purchase and sale of unseen lands, and as to trade, in the continual importation of tons of bullet lead.

26

CONVENTION OF BLOEMFONTEIN

(*P. P.*, 1857-8, xl.)

Articles of Convention entered into between Sir George Russell Clerk, Knight Commander of the Most Honourable Order of the Bath, Her Majesty's Special Commissioner for settling and adjusting the affairs of the Orange River territory, on the one part, and the under-mentioned Representatives, delegated by the inhabitants of said territory—

on the other part.

ARTICLE I.

Her Majesty's Special Commissioner, in entering into a convention for finally transferring the government of the Orange River territory to the representatives delegated by the inhabitants to receive it,

guarantees, on the part of Her Majesty's Government, the future independence of that country and its government, and that, after the necessary preliminary arrangements for making over the same between Her Majesty's Special Commissioner and the said representatives shall have been completed, the inhabitants of the territory shall then be free. And that this independence shall, without unnecessary delay, be confirmed and ratified by an instrument promulgated in such form and substance as Her Majesty may approve, finally freeing them from their allegiance to the British Crown, and declaring them to all intents and purposes a free and independent people, and their government to be treated and considered thenceforth as a free and independent government.

ARTICLE II.

The British Government has no alliance whatever with any native chiefs or tribes to the northward of the Orange River, with the exception of the Griqua Chief, Kaptyn Adam Kok, and Her Majesty's Government has no wish or intention to enter hereafter into any treaties which may be injurious or prejudicial to the interests of the Orange River government.

ARTICLE III.

With regard to the treaty existing between the British Government and the Chief Kaptyn Adam Kok, some modification of it is indispensable. Contrary to the provisions of that treaty, the sale of lands in the inalienable territory has been of frequent occurrence, and the principal object of the treaty thus disregarded. Her Majesty's Government, therefore, intends to remove all restrictions preventing Grikas from selling their lands, and measures are in progress for the purpose of affording every facility for such transactions, the Chief Adam Kok having for himself concurred in and sanctioned the same. And, with regard to those further alterations arising out of the proposed revision of relations with Kaptyn Adam Kok, in consequence of the aforesaid sales of land having from time to time been effected in the inalienable territory, contrary to the stipulations of the Maitland treaty, it is the intention of Her Majesty's Special Commissioner, personally, without unnecessary loss of time, to establish the affairs in Griqua land on a footing suitable to the just expectations of all parties.

ARTICLE IV.

After the withdrawal of Her Majesty's Government from the Orange River territory, the new Orange River government shall not permit any vexatious proceedings towards those of Her Majesty's present subjects remaining within the Orange River territory who may heretofore have been acting under the authority of Her Majesty's

Government, for or on account of any acts lawfully done by them, that is, under the law as it existed during the occupation of the Orange River territory by the British Government, such persons shall be considered to be guaranteed in the possession of their estates by the new Orange River government.* Also, with regard to those of Her Majesty's present subjects, who may prefer to return under the dominion and authority of Her Majesty to remaining where they now are as subjects of the Orange River government, such persons shall enjoy full right and facility for the disposal and transfer of their properties, should they desire to leave the country under the Orange River government at any subsequent period within three years from the date of this convention.

ARTICLE V.

Her Majesty's Government and the New Orange River government shall, within their respective territories, mutually use every exertion for the suppression of crime and keeping the peace, by apprehending and delivering up all criminals who may have escaped or fled from justice either way across the Orange River; and the courts, as well the British as those of the Orange River government, shall be mutually open and available to the inhabitants of both territories for all lawful processes. And all summonses for witnesses directed either way across the Orange River shall be countersigned by the magistrates of both governments respectively, to compel the attendance of such witnesses when and where they may be required, thus affording to the community north of the Orange River every assistance from the British Courts, and giving, on the other hand, assurance to such colonial merchants and traders as have naturally entered into credit transactions in the Orange River territory during its occupation by the British Government, and to whom, in many cases, debts may be owing, every facility for the recovery of just claims in the courts of the Orange River government. And Her Majesty's Special Commissioner will recommend the adoption of the like reciprocal privileges by the government of Natal in its relations with the Orange River government.

ARTICLE VI.

Certificates issued by the proper authorities, as well in the colonies and possessions of Her Majesty as in the Orange River territory, shall be held valid and sufficient to entitle heirs of lawful marriages and legatees to receive portions and legacies accruing to them respectively either within the jurisdiction of the British or Orange River government.

ARTICLE VII.

The Orange River government shall, as hitherto, permit no slavery or trade in slaves in their territory north of the Orange River.

ARTICLE VIII.

The Orange River government shall have freedom to purchase their supplies of ammunition in any British colony or possession in South Africa, subject to the laws provided for the regulation of the sale and transit of ammunition in such British colonies and possessions; and Her Majesty's Special Commissioner will recommend to the colonial governments that privileges of a liberal character, in connexion with import duties generally, be granted to the Orange River government, as measures in regard to which it is entitled to be treated with every indulgence, in consideration of its peculiar position and distance from the sea ports.

ARTICLE IX.

In order to promote mutual facilities and liberty to traders and travellers, as well in the British possessions as in those of the Orange River government, and it being the earnest wish of Her Majesty's Government that a friendly intercourse between these territories should at all times subsist, and be promoted by every possible arrangement, a consul or agent of the British Government, whose especial attention should be directed to the promotion of these desirable objects, will be stationed within the colony near to the frontier, to whom access may readily at all times be had by the inhabitants on both sides of the Orange River, for advice and information, as circumstances may require.

This done and signed at Bloemfontein on the twenty-third day of February one thousand eight hundred and fifty-four.

27

DESPATCH FROM RUSSELL TO SIR G. GREY [EXTRACT]
(*P. P.*, 1854-5, xxxviii.)

Downing Street, June 3, 1855.

SIR,

I have read with great interest the speech which you delivered to the Cape Parliament on the 15th March.

2. The importance of the subjects there treated, the ability with which you have treated them, and the certainty that these topics must occupy your attention and that of the Legislature for a very long time to come, induce me to state to you fully the views of Her Majesty's Government upon the policy to be pursued in that portion of South Africa placed under your direction.

3. Let me, in the first place, declare explicitly that it is for no object

of dominion or extension of territory that Great Britain wishes to maintain possession of British Kaffraria. So far as the interests of this empire are concerned, British Kaffraria might be abandoned and the eastern districts of the Cape colony left unprotected, without injury to the power of the United Kingdom, and with a considerable saving to its finances. But such considerations have not been allowed to prevail. The performance of an honourable duty to British colonists, the maintenance of a position acquired at great cost both of men and money, and, lastly, views of comprehensive and vigilant humanity induce Her Majesty's Government to take a very different course. Her Majesty, impelled by these high motives, approves therefore of the general line of policy which you propose to adopt.

4. It is my duty, however, to point out to you the serious obstacles which may prevent your deriving the immediate benefit you expect from the measures you have devised.

5. At the root of these obstacles lies the difficulty of supplying British Kaffraria with a sufficient European population to vanquish in arms and conquer by civilization the native tribes. On the frontier of the United States of America bordering on Mexico Indian races disturb and plunder the settlers. But the great flood of American population in no long time inundates and fertilizes the land.

6. On the frontiers of Austria the restless marauding borderers are kept in check by military colonies. But these colonies consist of husbandmen exercised as soldiers, and not of soldiers turned into husbandmen.

7. The Russian military colonies are organized with great skill, but the immense armies of Russia readily supply fresh materials for these colonies.

8. I fear that in British Kaffraria you will find it difficult either to stock the country with emigrants, or to procure from our limited body of pensioners a sufficient number of men fulfilling your conditions, and willing to embrace the prospects you hold out to them. Still, what is difficult is not impossible, and I will do all in my power to forward your design.¹

9. Could you by the other means which you propose, of employment on public works, of establishments for education, of hospitals for the benefit of the natives, and other subsidiary means, obtain an enduring influence over the African tribes, I should hope that the

¹ Schemes for settling old soldiers on the land, particularly in colonies where settlers were apt to be called upon to defend themselves against native tribes, were much in vogue at this time. While Lord Grey was Secretary of State, settlements were made at the Cape, where they were wiped out by the Kaffirs in December 1850, and, upon an improved plan in New Zealand, where they were a qualified success. Sir George Grey, who had then been Governor of New Zealand, was now proposing to settle a thousand families in British Kaffraria. The scheme was a failure, but a somewhat similar scheme for members of the German Legion which had served in the Crimea was partially successful.

measure of sending pensioners from this country might succeed as well in Kaffraria as in New Zealand.

10. I must frankly tell you, however, that perseverance in these measures must depend on the willingness of the Colonial Legislature to assist and promote your views. We cannot undertake to help the Cape colony unless the Cape colony is ready to take its proper share in the task.

11. You will understand, therefore, that the grant of 40,000*l.* now assented to, and the measure of sending pensioners to the eastern districts of the colony, are adopted in the hope that the Colonial Legislature will concur in your enlightened views, and assist them in the most liberal manner.

12. The alternative we have before us is one of vital importance.

13. If we succeed, we secure the colony of the Cape from invasion, we civilize savage tribes, we open a vast territory to the influence of Christianity, we give an example of an African nation adopting the peaceful habits and social improvements of an European community.

14. If we fail, the parliament of the United Kingdom will give up its work in despair; border wars will be perpetuated, and the Cape colony, even with the assistance of Her Majesty's troops, will find it difficult to bear the cost and repel the danger of repeated incursions of savage tribes.

28

DESPATCH FROM SIR G. GREY TO MOLESWORTH [EXTRACT]

(*P. P.*, 1856, xlii.)

Government House, Cape Town,
December 18, 1855.

SIR,

I have the honour to report, for your information, the outline of a system for the better administration of justice, which I am attempting to introduce into British Kaffraria as also the reasons which have led me to consider it imperatively necessary to introduce some change in the system which at present prevails there, and the degree of success which has hitherto attended my endeavours in this respect.

2. The system under which Kaffir Law has hitherto been administered in British Kaffraria has been, that accusations and complaints are brought before the Chief of each Tribe by any person of that Tribe who may deem either himself or the public to have been injured. Such complaint or accusation whether of a public or private nature, is then heard by the Chief and some of his counsellors, who impose

a fine (almost invariably so many head of cattle and horses) upon the party to whom they attribute guilt. The fine is levied by messengers sent by the Chief, and upon its being brought to the Chief's kraal, the messengers are first paid from the fine, for levying it; the Chief then takes such portion as he pleases for himself, distributing a part of this amongst the Counsellors who heard the case; the remaining portion of the fine, in a private case, is handed over to the complainant, who shares his portion amongst those of his friends who assisted him in the conduct of the case, the collection of the evidence, &c. All persons who are members of the tribe are regarded as the absolute property of the Chief. Hence, in all cases of murder or acts of violence committed on the person, the whole fine imposed and levied in the first instance is taken by the Chief, although he again gives a share of this to his counsellors.

3. The fines thus taken for the administration (as it may be termed) of justice constitute a very large part of the revenue of the Chief; and as the counsellors generally only remain for a few weeks about the person of the Chief, being then succeeded by others, the same fines enable him also to maintain about him at all times a certain retinue of attendants, to whom the same system of fining becomes a source of considerable profit.

4. The alleged offence of witchcraft (a public crime) subjects a person found guilty of it to torture and death and the total confiscation of his property. No sooner, therefore, does a person grow rich, than he is almost certain to be accused of this offence, and is, at least, stripped of all he possesses.

5. It is impossible that people subjected to such a system can ever advance in civilization, or long persevere in attempting honestly to acquire property, of which they are almost certain ultimately to be stripped at the caprice of the Chief and his counsellors.

6. Such a mode of administering what is termed justice can but continually train up a poor and restless race of robbers, who, if they are in the vicinity of a community wealthy in flocks and herds, yet much scattered (as is the case here), will from time to time look in and steal, and carry off the stolen property to their own country, where the Chiefs are little likely to assist in giving up thieves, who have only stolen that, the greater portion of which will probably ultimately in the due process of their own law become part of the private revenue of the Chief.

7. The same reasons which must lead these barbarian Chiefs to look with a very favourable eye upon thieves who pillage from beyond their own frontier, equally lead them to encourage accusations for witchcraft and other fictitious offences, and to earnestly seek rather to have the accused found guilty than acquitted.

8. Moreover, the Chiefs, deriving at least a very large part of their revenue from what may be termed the fees and fines of their courts

of justice, usurp, in fact, the prerogative of the Crown, exercising sovereignty by appropriating to their own wants a part of the public revenue, and interfering with the prerogative of mercy by preventing the Crown from remitting fines and penalties, however unjustly they may be imposed, and finally preventing the Queen from throwing any part of the protection afforded by British Laws over the quiet and well-disposed amongst Her Kaffir subjects.

9. It is important farther to remember that the jurisdiction of the Chiefs as above stated extends and is exercised, not only over certain persons, but over entire and extensive territories, the population in which is increasing, and is likely continually to increase, so that a dangerous power is already in existence, and is year by year growing more formidable and difficult to destroy.

10. The prevailing cattle sickness has not only greatly impoverished the Kaffirs, but by destroying the source from which fines were levied, was drying up as it were the future revenues of their Chiefs—an event which, whilst on the one hand it appeared likely to render barbarians more formidable from the recklessness induced by poverty,—on the other hand appeared to me to offer a most favourable opening for destroying the whole of that portion of the Kaffir system of polity which renders the progress of the Kaffirs in the arts of peace impossible.

11. I will therefore briefly state what the enclosures to this Despatch detail at length, viz., that I had a rough estimate made of the probable annual value of the fines received by the Chiefs under the present system, taking into account the uncertain nature of a revenue raised from such a source, the difficulty and unpopularity of levying it, and other similar circumstances; and I then offered to the Chiefs a monthly stipend, to be paid by the Government, equivalent to this revenue, and an allowance of so much a head for so many councillors, to be paid to the individuals performing the duties of that office, at the stipulated rate, for the number of days they performed such duties.

12. Under this arrangement, all fees and fines for public offences were to become a part of the revenues of the Crown, as in other countries. Fines for manslaughter were to be given to the families of the man slain. The Chiefs and councillors were still to sit and hear all cases, but to receive no farther payment for doing so, and they were to be assisted in their deliberations and sentences by a European magistrate; it being my intention to select, in as far as possible, such gentlemen from the ablest men this country affords.

13. Under such a plan all the worst part of the Kaffir polity is broken down. Every Chief of importance will receive a certain regular income, for which he will be dependent upon the Government of the country, and will therefore have the strongest interest in its maintenance and success. European laws will, by imper-

ceptible degrees, take the place of their own barbarous customs, and any Kaffir Chief of importance will be daily brought into contact with a talented and honourable European gentleman, who will hourly interest himself in the advance and improvement of the entire tribe, and must in process of time gain an influence over the native races, which will produce very beneficial effects.

29

DESPATCH FROM SIR G. GREY TO LABOUCHERE

(October 18, 1856) [EXTRACT]

(P. P., 1857-8, xl.)

I think it is impossible to consider carefully such a state of things as I have described without coming to the conclusion that a powerful, thoroughly organized, and military nation as the Kaffirs are, must, if left in such a condition, be expected every few years to break out into war, and it is certain that until the colony of the Cape of Good Hope contains an infinitely denser population than it does at present it cannot protect itself against such a war.

The best hope that presents itself to my mind for the future is that of our adopting the Kaffir system of polity into our own. That is, instead of leaving them as something beyond and distinct from the Government, attempting to make every chief of importance look to the Government for his remuneration, and requiring them to carry on those duties of magistrates, police, &c. which they exercise at present under the direction of British officers. In this manner the Government may by degrees gain a hold over every part of British Kaffraria; it may improve the tenure on which the chiefs and people hold their lands, and give them a vested interest in the soil; it may greatly increase their facilities for trade; whilst by availing itself of the complete system of organization which already exists the Government may make the Kaffir system a part of the government of the country, with which the whole of the native chiefs may by degrees become so interwoven that they will in fact be as it were incorporated or adopted into the Government, of which they will form a necessary and important part.

I hope that the chiefs of every rank, finding that they are thus directly connected with the Government by benefits which they can all feel and appreciate (instead of being absolutely isolated from it and having nothing to thank it for as hitherto), may by degrees become attached to a Government of which they form so large and influential a portion.

If such a result can be arrived at with the tribes of British Kaffraria, they will then form a barrier against the tribes beyond our limits. The great difficulty in carrying out these changes, and in rendering

them permanent, is the danger, constantly existing, that war may again break out before the Kaffirs as a nation have fully understood and appreciated the benefits which are being conferred upon them.

But even if such an untoward event does take place, I still think that the only hope for the future is a steady return to the same principles the moment that such a war has been effectually crushed.

VI

NATIVE AND FRONTIER POLICY

B. NEW ZEALAND

NEW ZEALAND has been exceptionally successful in dealing with its native problem, and though this is no doubt partly due to the small numbers of the Maori race in comparison with the Europeans, and partly to the exceptional qualities of the Maoris themselves, much of the credit must be ascribed to the genuine attempt made, almost from the beginning of the British occupation, to provide for the welfare of the natives and to find a satisfactory solution for the problems of race contact. Missionaries had been active in the northern part of the islands since 1814; and when the colonization of the country first came seriously under discussion the Report of the Aborigines Committee had just been issued to the world—the culmination of the efforts of an influential section of British opinion to lay down a body of liberal principles for the conduct of relations with native races [1]. The effect of this Parliamentary Committee on South Africa was unfortunate: but in New Zealand new ground was being broken, the problem was less complicated, and the mistakes made were not irreparable. At first, for example, the New Zealand Association, formed under the auspices of Wakefield for colonizing purposes, was eyed very suspiciously by Exeter Hall [2]: the missionaries were anxious to keep New Zealand as their own preserve, and the Report of a Committee of the Lords in 1838 was favourable to them. But events moved quickly: the New Zealand Association became the New Zealand Company, and when its colonizing schemes failed to secure Government approval a shipload of emigrants was sent, nevertheless, and the hand of the Government was forced. Indeed the Government had itself been coming over to the view that New Zealand must soon become a British colony: it now sent Captain Hobson to treat with the natives for the cession of sovereignty, and to see to it that their interests did not suffer in the land transactions of the New Zealand Company and of individual speculations [3]. The result of Hobson's mission was the Treaty of Waitangi, whereby in return for the cession of sovereignty the right of the natives to their lands was recognized and the stipulation made that they should be saleable only to the Crown [4].

In 1840 the affairs of the new colony were investigated by yet another Parliamentary Committee. Wakefield vindicated the Company from the charge of indifference to the interests of the natives, and the missionary representatives were now ready to admit that colonization had been inevitable [5]. Unfortunately this harmony was delusive. The Company, voicing no doubt the views of the colonists also, began to be impatient of the amount of deference shown to native rights [6]. A Committee of the House of Commons in 1844 agreed that the Company had been harshly treated and considered the native policy of the Government, and in particular its interpretation of the Treaty of Waitangi, to be mistaken [7]. On the other hand Lord Stanley was careful to dissociate himself from the doctrines of its Report [8]: and indeed it would never have been possible to carry them into effect. At the same time, it could not be denied that

colonization was at a standstill. The consideration for native interests enjoined by the Imperial Government had merely induced the narrow-minded and capricious Governors (Shortland and FitzRoy) openly to take sides with the natives against the European colonists. Moreover, in defiance of the Treaty of Waitangi, FitzRoy surrendered the pre-emptive right of the Crown [9], and in 1845 the colony was in a state of chaos, and two of the principal northern chiefs were in revolt.

The firm hand of Captain George Grey, however, ere long restored order; and it then became possible to make a fresh start. Instructed by Lord Grey, who had been Chairman of the 1844 Committee, to carry out as far as possible the principles of its Report, the Governor successfully represented that the right policy was not to dispute in academic fashion about Maori land law, but to take advantage of the willingness of the Maoris to sell land to the Government on easy terms [10]. But he did not make the mistake of thinking that the only business of the Government with the natives should be to buy their land: he made a bold attempt to win them over step by step to European ways of living, and to incorporate them and the British colonists into a single society [11]. So long as Sir George Grey himself remained in New Zealand, his policy, conducted with the approval and support of the Imperial Government, was extraordinarily successful, and the colony made steady progress. After his departure, however, two disquieting symptoms appeared. The success of his land purchase policy alarmed the more conservative chiefs, who formed a Land League to resist further sales. His success in winning the confidence of the natives had about it something essentially personal and therefore transitory; and the two races once again drifted into mutual suspicion and hostility [12]. The Constitution Act of 1852 and the subsequent grant of responsible government¹ raised yet another difficult question. On the one hand, colonial statesmen began to demand that with them and not with the Governor should rest the responsibility for native policy [13]; the Imperial Government, on the other hand, pointed out that those who paid the piper must call the tune [14].

Then in 1860 the long-smouldering discontent of the natives, particularly those of Taranaki, burst into flame [15]. The war, however, in due course led to the solution of the problems that had arisen since Grey's departure. The Imperial Government, in sending troops, was careful to point out that, though it recognized its responsibility in such an emergency, it was not prepared to keep them there as a permanent insurance or take the whole burden of defence from the shoulders of the colonists themselves [16]: and, as the war proceeded, even this responsibility was found irksome and the control of native affairs passed from Imperial to colonial hands. The colonists for their part, though at first reluctantly, rose to the height of their responsibilities, and Sir Donald McLean, the great Native Minister, set to work to establish peace on firm foundations. And the Maoris finally came to perceive the uselessness of trying to stem the rising tide of European influence. Thus the calamities with which the period closes were not suffered entirely in vain.

¹ See above, Section I, Nos. 45 and 52.

REPORT OF HOUSE OF COMMONS COMMITTEE ON ABORIGINES IN BRITISH SETTLEMENTS

(June 26, 1837) [EXTRACT]

(*P. P.*, 1837, vii.)

Great Britain has, in former times, countenanced evils of great magnitude,—slavery and the slave-trade; but for these she has made some atonement; for the latter, by abandoning the traffic; for the former, by the sacrifice of 20 millions of money. But for these offences there was this apology; they were evils of an ancient date, a kind of prescription might be pleaded for them, and great interests were entwined with them.

An evil remains very similar in character, and not altogether unfit to be compared with them in the amount of misery it produces. The oppression of the natives of barbarous countries is a practice which pleads no claim to indulgence; it is an evil of comparatively recent origin, imperceptible and unallowed in its growth; it never has had even the colour of sanction from the legislature of this country; no vested rights are associated with it, and we have not the poor excuse that it contributes to any interest of the state. On the contrary, in point of economy, of security, of commerce, of reputation, it is a short-sighted and disastrous policy. As far as it has prevailed, it has been a burthen on the empire. It has thrown impediments in the way of successful colonization; it has engendered wars, in which great expenses were necessarily incurred, and no reputation could be won; and it has banished from our confines, or exterminated, the natives, who might have been profitable workmen, good customers, and good neighbours. These unhappy results have not flowed from any determination on the part of the government of this country to deal hardly with those who are in a less advanced state of society; but they seem to have arisen from ignorance, from the difficulty which distance interposes in checking the cupidity and punishing the crimes of that adventurous class of Europeans who lead the way in penetrating the territory of uncivilized man, and from the system of dealing with the rights of the natives. Many reasons unite for apprehending that the evils which we have described will increase if the duty of coming to a solemn determination as to the policy we shall adopt towards ruder nations be now neglected; the chief of these reasons is, the national necessity of finding some outlet for the superabundant population of Great Britain and Ireland. It is to be feared that, in the pursuit of this benevolent and laudable object, the rights of those who have not the means of advocating their interests or exciting sympathy for their sufferings, may be disregarded.

This, then, appears to be the moment for the nation to declare,

that with all its desire to give encouragement to emigration, and to find a soil to which our surplus population may retreat, it will tolerate no scheme which implies violence or fraud in taking possession of such a territory; that it will no longer subject itself to the guilt of conniving at oppression, and that it will take upon itself the task of defending those who are too weak and too ignorant to defend themselves.

Your Committee have hitherto relied chiefly on arguments, showing that no national interest, even in its narrowest sense, is subserved by encroachments on the territory or disregard of the rights of the aboriginal inhabitants of barbarous countries; but they feel it their duty to add, that there is a class of motives of a higher order which conduce to the same conclusion.

The British empire has been signally blessed by Providence, and her eminence, her strength, her wealth, her prosperity, her intellectual, her moral and her religious advantages, are so many reasons for peculiar obedience to the laws of Him who guides the destinies of nations. These were given for some higher purpose than commercial prosperity and military renown. 'It is not to be doubted that this country has been invested with wealth and power, with arts and knowledge, with the sway of distant lands, and the mastery of the restless waters, for some great and important purpose in the government of the world. Can we suppose otherwise than that it is our office to carry civilization and humanity, peace and good government, and, above all, the knowledge of the true God, to the uttermost ends of the earth?'"* He who has made Great Britain what she is, will inquire at our hands how we have employed the influence He has lent to us in our dealings with the untutored and defenceless savage; whether it has been engaged in seizing their lands, warring upon their people, and transplanting unknown disease, and deeper degradation, through the remote regions of the earth; or whether we have, as far as we have been able, informed their ignorance, and invited and afforded them the opportunity of becoming partakers of that civilization, that innocent commerce, that knowledge and that faith with which it has pleased a gracious Providence to bless our own country.

SUGGESTIONS

Having thus adverted to some of the more remarkable of those incidents by which the intercourse between the British Colonies and the Aborigines in their vicinity has been characterized, it remains to consider how the recurrence of similar calamities can be most effectually averted.

It is obviously difficult to combine in one code rules to govern our intercourse with nations standing in different relationships towards us. Some are independent communities; others are, by the nature

* Rev. Mr. Whewell's Sermon before the Trinity Board.

of treaties, or the force of circumstances, under the protection of Great Britain, and yet retain their own laws and usages; some are our subjects, and have no laws but such as we impose.

To this variety in their circumstances must be added a variety as great in their moral and physical condition. They are found in all the grades of advancement, from utter barbarism to semi-civilization.

To propose regulations which shall apply to our own subjects and to independent tribes, to those emerging from barbarism, and to those in the rudest state of nature, is a task from which Your Committee would shrink, were it not that all the witnesses, differing as they do upon almost every other topic, unite in ascribing much of the evil which has arisen to the uncertainty and vacillation of our policy. Your Committee cannot too forcibly recommend that no exertion should be spared, and no time lost, in distinctly settling and declaring the principles which shall henceforth guide and govern our intercourse with those vast multitudes of uncivilized men, who may suffer in the greatest degree, or in the greatest degree be benefited, by that intercourse.

The regulations which we would suggest for that purpose are either general or special; that is, they either extend to all parts of the globe in which we are brought into contact with uncivilized tribes, or they apply only to the particular case of some one settlement. In the first place, therefore, we will advert to those general regulations which we have to suggest, and which may be reduced under nine separate heads.

I.—*Protection of Natives to devolve on the Executive.*

The protection of the Aborigines should be considered as a duty peculiarly belonging and appropriate to the Executive Government, as administered either in this country or by the Governors of the respective Colonies. This is not a trust which could conveniently be confided to the local Legislatures. In proportion as those bodies are qualified for the right discharge of their proper functions, they will be unfit for the performance of this office. For a local Legislature, if properly constituted, should partake largely in the interests, and represent the feelings or the settled opinions of the great mass of the people for whom they act. But the settlers in almost every Colony, having either disputes to adjust with the native tribes, or claims to urge against them, the representative body is virtually a party, and therefore ought not to be the judge in such controversies. Or if the members of the Colonial Legislature are not chosen by the people, but selected by the Government, there is still a similar objection to their interference with regard to the Aborigines. Possessing an invidious elevation, in which they are supported by no other title than that of the preference of the Crown, they will endeavour to abate the ill-will which follows on such superiority, by ministering to all

popular prejudices which do not directly invade the power and the rights of the Government they serve. Whatever may be the legislative system of any Colony, we therefore advise that, as far as possible, the Aborigines be withdrawn from its control. In the formation of any new colonial constitution, or in the amendment of any which now exist, we think that the initiative of all enactments affecting the Aborigines should be vested in the officer administering the Government; that no such law should take effect until it had been expressly sanctioned by the Queen, except in cases of evident and extreme emergency; that copies of all such laws should be communicated to both Houses of Parliament with all convenient dispatch; and that the Governor of each Colony should be invested by Her Majesty, so far as the Royal Prerogative should be adequate to the purpose, with authority for the decision of all questions affecting the interests of the native tribes. If the creation of such powers by the Crown shall not appear practicable, then we conceive that they should be created by Legislative authority.

Your Committee would take occasion to observe, that so far as regards that portion of the Aborigines who may inhabit the country beyond our colonial frontiers respectively, the Provincial Legislatures have no authority to make enactments; and thus far, therefore, there will be less difficulty in retaining the government of our relations with the Aborigines in more impartial hands.

II.—*Contracts for Service to be limited.*

No vagrancy laws or other regulations should be allowed, the effect of which might be to cripple the energies of the natives, by preventing them selling their labour at the best price, and at the market most convenient for themselves. All contracts for service into which any of the Aborigines may enter with any of the colonists should be expressly limited in their duration to a period which should, in no case, exceed 12 months. At the expiration of that time, the servant should be, in the fullest sense of the term, free to abandon or to continue the service at his discretion; and the master shall not have any claim upon the servant, on the ground of advances alleged to have been made by him. But every contract for service should be made in the presence of an officer specially appointed for that purpose, in whom should be vested a summary jurisdiction to enforce the payment of the stipulated wages. To the neglect of regulations of this kind is to be ascribed the growth of a servile relation, differing little from slavery, properly so called, into which the natives were formerly brought in some of our foreign possessions.¹

¹ It was, of course, in the old slave colonies that this question of contracts for service was most important. In 1838 an Order in Council was issued limiting the duration of such contracts in all Crown Colonies to one year, and requiring them to be made within the borders of the colony. This was regarded by the planters as imposing an unnecessary obstacle in the way of immigration schemes, and it was long a bone

III.—*Sale of ardent Spirits to be prevented.*

The prohibition of the sale of ardent spirits, or the delivery of them to the natives in barter, is an object of the deepest interest, which it is, therefore, impossible to pass over in silence; at the same time, it is vain to deny the extreme difficulty of rendering any such prohibitory rule effectual, such are the temptations, and such the facilities, to disobedience. It is useless, therefore, to advance further than to recommend this subject to the diligent attention of all the local governments, who will remember, that for the extermination of men who are exempt from the restraints both of Christianity and of civilization, there is no weapon so deadly or so certain as the produce of the distilleries.

IV.—*Regulations as to Lands within British Dominions.*

So far as the lands of the Aborigines are within any territories over which the dominion of the Crown extends, the acquisition of them by Her Majesty's subjects, upon any title of purchase, grant or otherwise, from their present proprietors, should be declared illegal and void. This prohibition might also be extended to lands situate within territories which, though not forming a part of the Queen's dominions, are yet in immediate contiguity to them. But it must be admitted, that we have not the power to prevent transactions of this nature in the countries which are neither within the Queen's allegiance, nor affected by any of those intimate relations which grow out of immediate neighbourhood. In such cases it may be impracticable to prevent the acquisition of lands by British subjects; but it should be distinctly understood, that all persons who embark in such undertakings must do so at their own peril, and have no claim on Her Majesty for support in vindicating the titles which they may so acquire, or for protecting them against any injury to which they may be exposed in the prosecution of any such undertakings.

V.—*New Territories not to be acquired without Sanction of Home Government.*

Your Committee recommend that it should be made known to all governors of Her Majesty's Colonies, that they are forbidden by Her Majesty to acquire in her name any accession of territory, either in sovereignty or in property, without the previous sanction of an Act of Parliament. If, however, at any time, under special circumstances, such accession of territory shall have been made upon the responsibility of the Colonial Executive, then it ought to be distinctly announced to those who may avail themselves of it, that they acquire of contention between them and the Colonial Office. Some of the Governors, notably Lord Harris, then began, with some reservations, to take the planters' part, and the Colonial Office gradually gave way and permitted, under certain restrictions, contracts of three and later of five years' duration.

no valid title to any part of such lands, nor a claim to be defended by the Crown in their occupancy, until the formal authority of the Legislature shall have thus been obtained. This and the preceeding rule, of course, does not apply to the settlement of vacant lands comprised within any of the existing British Colonies, the extent of which, both in North and South America, in Australia, and in Southern Africa, is certainly sufficient to absorb whatever labour or capital could be profitably devoted to colonization.

VI.—*Religious Instruction and Education to be provided.*

The revenue of each Colony should be considered as subject to a charge for such sums as may be necessary to provide for the religious instruction and for the protection of the survivors of the tribes to which the lands comprised in that Colony formerly belonged; and the same rule should apply to the tribes inhabiting those territories which are now in progress of settlement by Her Majesty's subjects. The specific appropriation of such funds to their immediate object must be referred to the Governors of the various Colonies, subject to such instructions as they may receive from Her Majesty's Government in this country. Although it be true that the land in our Colonies has derived the greater part of its exchangeable value from the capital and the labour employed in the cultivation of it, yet, even in its most rude and wild state, that land is demonstrably worth a very large amount of money. Thus, Parliament has fixed a minimum price of 12s. per acre for the lands of South Australia, at which rate they appear to have been sold in London to the amount of some hundred thousand pounds sterling, before a single European had landed on the spot; yet for this important acquisition the ancient occupiers of the soil have not received so much as a nominal equivalent. In North and South America, and in Southern Africa, the ancient lords of the wilderness have been dispossessed with little, if any, more ceremony; yet, on the banks of Lake Huron, and of the River Essequibo,¹ wild lands are now bought and sold at prices not seldom exceeding even that which is obtained in Southern Australia. It requires no argument to show that we thus owe to the natives a debt, which will be but imperfectly paid by charging the Land Revenue of each of these Provinces with whatever expenditure is necessary for the instruction of the adults, the education of their youth, and the protection of them all.

VII.—*Punishment of Crimes.*

Provision has already been made by law for the punishment of crimes committed by Her Majesty's subjects on the North American

¹ The Essequibo is one of the three great rivers of British Guiana. Its banks were settled before those of the Demerara, but the growth of Georgetown at the mouth of the latter caused the newer settlement to predominate over the older.

continent, beyond the northern and western limits of the Canadas; in Southern Africa, beyond the limits of the Cape of Good Hope; and in the islands of the South Sea, beyond the jurisdiction of the Australian Colonies. But the provision thus made for the redress of wrongs is defective and unsatisfactory. Beyond the frontier justice is feebly administered, and within it ignorant savages are often made amenable to a code of which they are absolutely ignorant, and the whole spirit and principles of which are foreign to their modes of thought and action. It would be vain to expect the establishment of any other than a most imperfect system of justice amongst persons placed in such circumstances; but for the improvement of the present system some suggestions may be offered. Thus, when the British Law is violated by the Aborigines within the British dominions, it seems right that the utmost indulgence compatible with a due regard for the lives and properties of others, should be shown for their ignorance and prejudices. Actions which they have been taught to regard as praiseworthy we consider as meriting the punishment of death. It is of course impossible to adopt or sanction the barbarous notions which have urged the criminal to the commission of the offence, but neither is it just to exclude them from our view in awarding the punishment of his crime.

Again: in the case of offences committed beyond the borders, British subjects are amenable to colonial courts—the Aborigines are not. From this distinction arises, not merely a failure of justice, but, as far as our own people are concerned, an appearance at least of partiality and wrong, of which they are the victims. British subjects exposed to outrages in a country where there is no established form of civil government, and attacked by persons who are not amenable to our own courts, must be expected to resort to other means of self-defence, and not seldom to urge those means beyond the strict bounds of necessity or justice. It would, therefore, on every account, be desirable to induce the tribes in our vicinity to concur in devising some simple and effectual method of bringing to justice such of their own people as might be guilty of offences against the Queen's subjects. For that purpose, treaties might be made with the chiefs of the independent tribes, defining, with all practicable simplicity, what acts should be considered as penal, by what penalties they should be visited, and in what form of procedure those penalties should be enforced.

VIII.—*Treaties with Natives inexpedient.*

As a general rule, however, it is inexpedient that treaties should be frequently entered into between the local Governments and the tribes in their vicinity. Compacts between parties negotiating on terms of such entire disparity are rather the preparatives and the apology for disputes than securities for peace: as often as the resent-

ment or the cupidity of the more powerful body may be excited, a ready pretext for complaint will be found in the ambiguity of the language in which their agreements must be drawn up, and in the superior sagacity which the European will exercise in framing, in interpreting, and in evading them. The safety and welfare of an uncivilized race require that their relations with their more cultivated neighbours should be diminished rather than multiplied.

IX.—*Missionaries to be encouraged.*

To the preceding statement an exception is to be made so far as respects the pastoral relation formed between Christian missionaries and the Aborigines.

To protect, assist and countenance these gratuitous and invaluable agents is amongst the most urgent duties of the Governors of our Colonies. On the other hand, those by whom the missionaries are selected and employed cannot be too deeply impressed with a sense of the responsibility under which that choice is made. Without deviating into discussions scarcely within the proper province of a Parliamentary Committee, it may be observed, that piety and zeal, though the most essential qualifications of a missionary to the Aborigines, are not the only endowments indispensable to the faithful discharge of his office: in such situations it is necessary that with plans of moral and religious improvement should be combined well-matured schemes for advancing the social and political improvement of the tribes, and for the prevention of any sudden changes which might be injurious to the health and physical constitution of the new converts.

2

HOUSE OF LORDS COMMITTEE ON NEW ZEALAND

(1838): EVIDENCE OF COATES [EXTRACT]¹

(*P. P.*, 1837-8, xxi.)

Have the Committee of the Church Missionary Society formed any opinion on the Plan of the New Zealand Association for colonizing that Country? if so, what is that Opinion, and on what Considerations is it grounded?

The Committee of the Church Missionary Society formed an Opinion on the Plan of the New Zealand Association very soon after the Prospectus of the Association was made public. They adopted, in reference to it, these Resolutions, on the 6th of June 1837:—‘First. That the New Zealand Association appears to the Committee highly

¹ Dandeson Coates, Secretary of the Church Missionary Society and a man of strong character and great ability, was the most active opponent of the colonization of New Zealand and was in constant and confidential correspondence with the Colonial Office on New Zealand affairs.

objectionable, on the Principle that it proposes to engage the British Legislature to sanction the Disposal of Portions of a foreign Colony over which it has no Claim of Sovereignty or Jurisdiction whatever. Secondly. That the Association is further objectionable from its involving the Colonization of New Zealand by Europeans; such Colonization of Countries inhabited by uncivilized Tribes having been found by universal Experience to lead to the Infliction upon the Aborigines of the greatest Wrongs and most severe Injuries. Thirdly. That the Committee consider the Execution of such a Scheme as that contemplated by the New Zealand Association especially to be deprecated in the present case, from its unavoidable Tendency, in their Judgment, to interrupt, if not to defeat, those Measures for the Religious Improvement and Civilization of the Natives of New Zealand, which are now in favourable Progress through the Labours of the Missionaries. Fourthly. That, for the Reasons assigned in the preceding Resolutions, the Committee are of opinion, that all suitable Means should be employed to prevent the Plan of the New Zealand Association from being carried into execution.'

3

DESPATCH FROM NORMANBY TO HOBSON

[EXTRACT]¹

(P. P., 1840, xxxiii.)

Downing Street, August 14th, 1839.

SIR,

Your appointment to the office of Her Majesty's Consul at New Zealand having been signified to you by Viscount Palmerston, and his Lordship having conveyed to you the usual instructions for your guidance in that character, it remains for me to address you on the subject of the duties which you will be called to discharge, in a separate capacity, and under my own official superintendence.

The acquaintance which your service in Her Majesty's Navy has enabled you to obtain with the state of society in New Zealand, relieves me from the necessity of entering on any explanations on that subject. It is sufficient that I should generally notice the fact, that a very considerable body of Her Majesty's subjects have already established their residence and effected settlements there, and that many persons in this kingdom have formed themselves into a society, having for its object the acquisition of land, and the removal of emigrants to those islands.

¹ William Hobson, the first Governor of New Zealand, was a Captain in the Royal Navy. His administration gained him the respect of the natives, but he allowed himself to take up too partisan an attitude towards the settlers of the New Zealand Company. But as he had a paralytic stroke in 1840 and was an invalid until his death in September 1842 it is doubtful how far the later acts of his government are really his own.

Her Majesty's Government have watched these proceedings with attention and solicitude. We have not been insensible to the importance of New Zealand to the interests of Great Britain in Australia, nor unaware of the great natural resources by which that country is distinguished, or that its geographical position must in seasons, either of peace or of war, enable it, in the hands of civilized men, to exercise a paramount influence in that quarter of the globe. There is, probably, no part of the earth in which colonization could be effected with a greater or surer prospect of national advantage.

On the other hand, the Ministers of the Crown have been restrained by still higher motives from engaging in such an enterprise. They have deferred to the advice of the Committee appointed by the House of Commons in the year 1836, to inquire into the state of the Aborigines residing in the vicinity of our colonial settlements; and have concurred with that Committee in thinking that the increase of national wealth and power, promised by the acquisition of New Zealand, would be a most inadequate compensation for the injury which must be inflicted on this kingdom itself, by embarking in a measure essentially unjust, and but too certainly fraught with calamity to a numerous and inoffensive people, whose title to the soil and to the sovereignty of New Zealand is indisputable, and has been solemnly recognized by the British Government. We retain these opinions in unimpaired force; and though circumstances entirely beyond our control have at length compelled us to alter our course, I do not scruple to avow that we depart from it with extreme reluctance.

The necessity for the interposition of the Government has, however, become too evident to admit of any further inaction. The reports which have reached this office within the last few months, establish the facts, that about the commencement of the year 1838, a body of not less than two thousand British subjects had become permanent inhabitants of New Zealand; that amongst them were many persons of bad or doubtful character—convicts who had fled from our penal settlements, or seamen who had deserted their ships; and that these people, unrestrained by any law, and amenable to no tribunals, were alternately the authors and the victims of every species of crime and outrage. It further appears that extensive cessions of land have been obtained from the natives, and that several hundred persons have recently sailed from this country to occupy and cultivate those lands. The spirit of adventure having thus been effectually roused, it can no longer be doubted that an extensive settlement of British subjects will be rapidly established in New Zealand; and that, unless protected and restrained by necessary laws and institutions, they will repeat, unchecked, in that quarter of the globe, the same process of war and spoliation, under which uncivilized tribes have almost invariably disappeared as often as they have been brought into the immediate vicinity of emigrants from the nations

of Christendom. To mitigate and, if possible, to avert these disasters, and to rescue the emigrants themselves from the evils of a lawless state of society, it has been resolved to adopt the most effective measures for establishing amongst them a settled form of civil government. To accomplish this design is the principal object of your mission.

I have already stated that we acknowledge New Zealand as a sovereign and independent state, so far at least as it is possible to make that acknowledgement in favour of a people composed of numerous, dispersed, and petty tribes, who possess few political relations to each other, and are incompetent to act, or even to deliberate, in concert. But the admission of their rights, though inevitably qualified by this consideration, is binding on the faith of the British Crown. The Queen, in common with Her Majesty's immediate predecessor, disclaims, for herself and for her subjects, every pretension to seize on the islands of New Zealand, or to govern them as a part of the dominion of Great Britain, unless the free and intelligent consent of the natives, expressed according to their established usages, shall be first obtained. Believing, however, that their own welfare would, under the circumstances I have mentioned, be best promoted by the surrender to Her Majesty of a right now so precarious, and little more than nominal, and persuaded that the benefits of British protection, and of laws administered by British judges, would far more than compensate for the sacrifice by the natives, of a national independence, which they are no longer able to maintain, Her Majesty's Government have resolved to authorize you to treat with the Aborigines of New Zealand for the recognition of Her Majesty's sovereign authority over the whole or any parts of those islands which they may be willing to place under Her Majesty's dominion. I am not unaware of the difficulty by which such a treaty may be encountered.¹ The motives by which it is recommended are, of course, open to suspicion. The natives may, probably, regard with distrust a proposal which may carry on the face of it the appearance of humiliation on their side, and of a formidable encroachment on ours; and their ignorance even of the technical terms in which that proposal must be conveyed, may enhance their aversion to an arrangement of which they may be unable to comprehend the exact meaning, or the probable results. These, however, are impediments to be gradually overcome by the exercise, on your part, of mildness, justice, and perfect sincerity in your intercourse with them. You will, I trust, find powerful auxiliaries amongst the missionaries, who have won and deserved their confidence, and amongst the older British residents who have studied their character, and acquired their language.

¹ Note the remarks in the report of the Aborigines Committee on the subject of treaties (above, No. 1). Yet it was not only in New Zealand but in South Africa also that treaties with the natives most definitely embodied the general ideas that inspired the report.

It is almost superfluous to say that in selecting you for the discharge of this duty, I have been guided by a firm reliance on your uprightness and plain dealing. You will, therefore, frankly and unreservedly explain to the natives, or their chiefs, the reasons which should urge them to acquiesce in the proposals you will make to them. Especially you will point out to them the dangers to which they may be exposed by the residence amongst them of settlers amenable to no laws or tribunals of their own; and the impossibility of Her Majesty's extending to them any effectual protection unless the Queen be acknowledged as the sovereign of their country, or at least of those districts within, or adjacent to which, Her Majesty's subjects may acquire lands or habitations. If it should be necessary to propitiate their consent by presents or other pecuniary arrangements, you will be authorized to advance at once, to a certain extent, in meeting such demands, and beyond those limits you will reserve and refer them for the decision of Her Majesty's Government.

It is not, however, to the mere recognition of the sovereign authority of the Queen that your endeavours are to be confined, or your negotiations directed. It is further necessary that the chiefs should be induced, if possible, to contract with you, as representing Her Majesty, that henceforward no lands shall be ceded, either gratuitously or otherwise, except to the Crown of Great Britain. Contemplating the future growth and extension of a British colony in New Zealand, it is an object of the first importance that the alienation of the unsettled lands within its limits should be conducted, from its commencement, upon that system of sale of which experience has proved the wisdom, and the disregard of which has been so fatal to the prosperity of other British settlements. With a view to those interests, it is obviously the same thing whether large tracts of land be acquired by the mere gift of the Government, or by purchases effected on nominal considerations from the Aborigines. On either supposition, the land revenue must be wasted; the introduction of emigrants delayed or prevented, and the country parcelled out amongst large landholders, whose possessions must long remain unprofitable, or rather a pernicious waste. Indeed, in the comparison of the two methods of acquiring land gratuitously, that of grants from the Crown, mischievous as it is, would be the less inconvenient, as such grants must be made with at least some kind of system, with some degree of responsibility, subject to some conditions and recorded for general information. But in the case of purchases from the natives, even these securities against abuse must be omitted; and none could be substituted for them. You will, therefore, immediately on your arrival, announce, by a proclamation addressed to all the Queen's subjects in New Zealand, that Her Majesty will not acknowledge as valid any title to land which either has been, or shall hereafter be acquired, in that country which is not either derived from,

or confirmed by, a grant to be made in Her Majesty's name, and on her behalf. You will, however, at the same time, take care to dispel any apprehensions which may be created in the minds of the settlers that it is intended to dispossess the owners of any property which has been acquired on equitable conditions, and which is not upon a scale which must be prejudicial to the latent interests of the community.

Extensive acquisitions of such lands have undoubtedly been already obtained, and it is probable that, before your arrival, a great addition will have been made to them. The embarrassments occasioned by such claims will demand your earliest and most careful attention.

I shall, in the sequel, explain the relation in which the proposed colony will stand to the government of New South Wales.¹ From that relation I propose to derive the resource necessary for encountering the difficulty I have mentioned. The Governor of that colony will, with the advice of the Legislative Council, be instructed to appoint a Legislative Commission to investigate and ascertain what are the lands in New Zealand held by British subjects under grants from the natives, how far such grants were lawfully acquired, and ought to be respected, and what may have been the price or other valuable considerations given for them. The Commissioners will make their report to the Governor, and it will then be decided by him how far the claimants, or any of them, may be entitled to confirmatory grants from the Crown, and on what conditions such confirmations ought to be made.

The propriety of immediately subjecting to a small annual tax all uncleared lands within the British settlements in New Zealand, will also engage the immediate attention of the Governor and Council of New South Wales. The forfeiture of all lands, in respect of which the tax shall remain for a certain period in arrear, would probably, before long, restore to the demesne of the Crown so much of the waste land as may be held, unprofitably to themselves and to the public, by the actual claimants.

Having, by these methods, obviated the dangers of the acquisition of large tracts of country by mere land-jobbers, it will be your duty to obtain, by fair and equal contracts with the natives, the cession to the Crown of such waste lands as may be progressively required for the occupation of settlers resorting to New Zealand. All such contracts should be made by yourself, through the intervention of an officer expressly appointed to watch over the interests of the aborigines as their protector. The re-sales of the first purchases that may be made, will provide the funds necessary for future acquisitions; and, beyond the original investment of a comparatively small sum of money, no other resource will be necessary for this purpose. I thus

¹ By this despatch Hobson was instructed to place himself under the orders of Sir G. Gipps as Governor of New South Wales, and the Legislative Council of New South Wales was to legislate for New Zealand. The connexion, however, was of short duration: by Lord John Russell's instructions of December 1840 New Zealand was constituted a separate colony, and on May 3, 1841, it was proclaimed as such.

assume that the price to be paid to the natives by the local government will bear an exceedingly small proportion to the price for which the same lands will be re-sold by the Government to the settlers. Nor is there any real injustice in this inequality. To the natives or their chiefs much of the land of the country is of no actual use, and, in their hands, it possesses scarcely any exchangeable value. Much of it must long remain useless, even in the hands of the British Government also, but its value in exchange will be first created, and then progressively increased, by the introduction of capital and of settlers from this country. In the benefits of that increase the natives themselves will gradually participate.

All dealings with the aborigines for their lands must be conducted on the same principles of sincerity, justice, and good faith, as must govern your transactions with them for the recognition of Her Majesty's Sovereignty in the Islands. Nor is this all: they must not be permitted to enter into any contracts in which they might be the ignorant and unintentional authors of injuries to themselves. You will not, for example, purchase from them any territory, the retention of which by them would be essential, or highly conducive, to their own comfort, safety or subsistence. The acquisition of land by the Crown for the future settlement of British subjects must be confined to such districts as the natives can alienate, without distress or serious inconvenience to themselves. To secure the observance of this,—will be one of the first duties of their official protector.

There are yet other duties owing to the aborigines of New Zealand, which may be all comprised in the comprehensive expression of promoting their civilization,—understanding by that term whatever relates to the religious, intellectual, and social advancement of mankind. For their religious instruction, liberal provision has already been made by the zeal of the missionaries, and of the missionary societies in this kingdom; and it will be at once the most important, and the most grateful of your duties to this ignorant race of men, to afford the utmost encouragement, protection, and support, to their Christian teachers. I acknowledge, also, the obligation of rendering to the missions such pecuniary aid as the local Government may be able to afford, and as their increased labours may reasonably entitle them to expect. The establishment of schools for the education of the aborigines in the elements of literature, will be another object of your solicitude; and until they can be brought within the pale of civilized life, and trained to the adoption of its habits, they must be carefully defended in the observance of their own customs, so far as these are compatible with the universal maxims of humanity and morals. But the savage practices of human sacrifice, and of cannibalism, must be promptly and decisively interdicted. Such atrocities, under whatever plea of religion they may take place, are not to be tolerated within any part of the dominions of the British Crown.

DESPATCH FROM HOBSON TO GIPPS AND TREATY OF WAITANGI

(*P. P.*, 1841, xvii.)

Her Majesty's Ship Herald, Bay of Islands,
5 February 1840.

SIR,

I have the honour to acquaint your Excellency, that immediately on my arrival here I circulated notices, printed in the native language, that on this day I would hold a meeting of the chiefs of the confederation, and of the high chiefs who had not yet signed the declaration of independence, for the purpose of explaining to them the commands I had received from Her Majesty the Queen, and of laying before them the copy of a treaty which I had to propose for their consideration.

Accordingly a vast number of chiefs, with a multitude of followers, crowded in from every quarter, and at 12 this day they assembled under spacious tents, decorated with flags, which had been previously erected at Waitangi by the direction of Captain Nias, of this ship.

Preparatory to the meeting, I had appointed a levee to be held at Mr. Busby's house,¹ at 11 o'clock, to which I invited all the principal European inhabitants, the members of the Church of England and Catholic missions, and all the officers of this ship, and was highly gratified to find that nearly every one, either here or in the neighbourhood, favoured me with their attendance.

Soon after 12, I proceeded to the tent, supported by Captain Nias and his officers, Mr. Busby, the late resident, the members of the Church Missionary Society, the French bishop, the officers of the Government, and all the principal European inhabitants, &c. in procession, and took my seat on a raised platform, surrounded by the gentlemen, in the same order as they had accompanied me. In the centre of the area within the tents, the chiefs seated themselves upon the ground, leaving a space around them for the Europeans. The whole spectacle produced a most imposing effect.

The business of the meeting then commenced by my announcing to the chiefs the objects of my mission, and the reasons that had induced Her Majesty to appoint me. I explained to them in the fullest manner the effect that might be hoped to result from the measure, and I assured them in the most fervent manner that they might rely implicitly on the good faith of Her Majesty's Government in the transaction. I then read the treaty, a copy of which I have the

¹ James Busby had been British Resident at Kororareka, in the Bay of Islands, from 1832 until the arrival of Hobson. He was aptly termed by the Maoris 'the man-of-war without guns'. It was he who organized in October 1835 the 'Confederation of the United Tribes of New Zealand' above referred to.

honour to enclose; and in doing so, I dwelt on each article, and offered a few remarks explanatory of such passages as they might be supposed not to understand. Mr. H. Williams, of the Church Missionary Society,¹ did me the favour to interpret, and repeated in the native tongue, sentence by sentence, all I said.

When I had finished reading the treaty, I invited the chiefs to ask explanations on any point they did not comprehend, and to make any observations or remarks on it they pleased. Twenty or thirty chiefs addressed the meeting, five or six of whom opposed me with great violence, and at one period with such effect, and so cleverly, that I began to apprehend an unfavourable impression would be produced. At this crisis the Hokianga chiefs, under Neni and Patawoni, made their appearance, and nothing could have been more seasonable. It was evident, from the nature of the opposition, that some underhand influence had been at work. The chiefs Revewah and Jakahra, who are followers of the Catholic bishop,² were the principal opposers, and the arguments were such as convinced me they had been prompted. Revewah, while addressing me, turned to the chiefs and said, 'Send the man away; do not sign the paper; if you do, you will be reduced to the condition of slaves, and be obliged to break stones for the roads. Your land will be taken from you, and your dignity as chiefs will be destroyed.'

At the first pause, Neni came forward and spoke with a degree of natural eloquence that surprised all the Europeans, and evidently turned aside the temporary feeling that had been created. He first addressed himself to his own countrymen, desiring them to reflect on their own condition, to recollect how much the character of New Zealanders had been exalted by their intercourse with Europeans, and how impossible it was for them to govern themselves without frequent wars and bloodshed, and he concluded his harangue by strenuously advising them to receive us and to place confidence in our promises. He then turned to me and said, 'You must be our father! You must not allow us to become slaves! You must preserve our customs, and never permit our lands to be wrested from us!' One or two other chiefs who were favourable followed him in the same strain, and one reproached a noisy fellow named Kitigi, of the adverse party, with having spoken rudely to me. Kitigi, stung by the remark, sprang forward and shook me violently by the hand, and I received the salute apparently with equal ardour. This occasioned amongst the natives a general expression of applause, and a loud cheer from the Euro-

¹ Henry Williams retired from the navy in 1815 to take holy orders, and was now the leading Church of England missionary in New Zealand. A few years later he was vehemently attacked by Sir George Grey on account of certain purchases of land for his family, but in the end he completely vindicated his character.

² Bishop Pompallier, who was appointed Bishop of New Zealand by Pope Gregory XVI in 1836. Despite the suspicions entertained, particularly by the British missionaries in the colony, his object seems to have been genuine mission work rather than politics. In 1851 he became a naturalized British subject.

peans, in which the natives joined, and thus the business of the meeting closed, further consideration of the question being adjourned to Friday at 11 o'clock, leaving, as I said, one clear day to reflect on my proposal.

6 February 1840.

At 10 o'clock this morning, it was announced to me that the chiefs, being impatient of further delay, and perfectly satisfied with the proposals I had made them, were desirous at once to sign the treaty, that they might return to their homes. The further consideration of the question had been adjourned from the 5th to the 7th; but to have refused this request would probably have rendered nugatory the whole proceeding, by the dispersion of the tribes before they had attested their consent by their signatures. I therefore assembled the officers of the Government, and, with Mr. Busby and the gentlemen of the missionary body, I proceeded to the tents, where the treaty was signed in due form by 46 head chiefs, in presence of at least 500 of inferior degree.

As the acquiescence of these chiefs, 26 of whom had signed the declaration of independence, must be deemed a full and clear recognition of the sovereign rights of Her Majesty over the northern parts of this island, it will be announced by a salute of 21 guns, which I have arranged with Captain Nias shall be fired from this ship tomorrow.

In the course of this proceeding I have courted the utmost publicity, and I have forborne to adopt even the customary measure of propitiating the consent of the chiefs by presents or promises; and not until the treaty had been signed did I give them anything. To have sent them home without some acknowledgement would have been a violation of their customs, and would have given offence; I therefore distributed amongst them a few articles of trifling value before they separated.

It is my intention next week to visit Hokianga, and I hope to obtain the adherence of such of the chiefs of that district as were not present at Waitangi.

I have, &c.

(signed) W. HOBSON.

TREATY

Her Majesty Victoria, Queen of the United Kingdom of Great Britain and Ireland, regarding with Her Royal favour the native chiefs and tribes of New Zealand, and anxious to protect their just rights and property, and to secure to them the enjoyment of peace and good order, has deemed it necessary, in consequence of the great number of Her Majesty's subjects who have already settled in New Zealand, and the rapid extension of emigration both from Europe and

Australia, which is still in progress, to constitute and appoint a functionary properly authorized to treat with the aborigines of New Zealand for the recognition of Her Majesty's sovereign authority over the whole or any part of those islands. Her Majesty, therefore, being desirous to establish a settled form of civil government, with a view to avert the evil consequences which must result from the absence of the necessary laws and institutions, alike to the native population and to Her subjects, has been graciously pleased to empower and to authorize me, William Hobson, a captain in Her Majesty's Royal Navy, Consul and Lieutenant-governor over such parts of New Zealand as may be, or hereafter shall be, ceded to Her Majesty, to invite the confederated and independent chiefs of New Zealand to concur in the following articles and conditions:—

Article the First.—The chiefs of the confederation of the united tribes of New Zealand, and the separate and independent chiefs who have not become members of the confederation, cede to Her Majesty the Queen of England, absolutely, and without reservation, all the rights and powers of sovereignty which the said confederation or individual chiefs respectively exercise or possess, or may be supposed to exercise or to possess, over their respective territories, as the sole sovereigns thereof.

Article the Second.—Her Majesty the Queen of England confirms and guarantees to the chiefs and tribes of New Zealand, and to the respective families and individuals thereof, the full, exclusive, and undisturbed possession of their lands and estates, forests, fisheries, and other properties which they may collectively or individually possess, so long as it is their wish and desire to retain the same in their possession. But the chiefs of the united tribes, and the individual chiefs, yield to Her Majesty the exclusive right of pre-emption over such lands as the proprietors thereof may be disposed to alienate, at such prices as may be agreed upon between the respective proprietors and persons appointed by Her Majesty to treat with them on that behalf.

Article the Third.—In consideration thereof, Her Majesty the Queen of England extends to the natives of New Zealand Her royal protection, and imparts to them all the rights and privileges of British subjects.

(signed) W. HOBSON.

Now therefore, we, the chiefs of the confederation of the united tribes of New Zealand, being assembled in congress, at Victoria, in Waitangi, and we, the separate and independent chiefs of New Zealand, claiming authority over the tribes and territories which are specified after our respective names, having been made fully to understand the provisions of the foregoing treaty, accept and enter into the same in the full spirit and meaning thereof.

In witness whereof, we have attached our signatures or marks at the places and dates respectively specified.

Done at Waitangi, this 6th day of February, in the year of our Lord 1840.

(512 signatures.)¹

5

HOUSE OF COMMONS COMMITTEE ON NEW ZEALAND (1840): EVIDENCE OF WAKEFIELD, COATES, AND BEECHAM [EXTRACTS]

(*P. P.*, 1840, vii.)

[*Mr. E. G. Wakefield* examined.]

*Chairman.*²] 157. Do you know what quantity of land has been purchased by the company?—I believe that the territory acquired by the company is estimated at nearly 20,000,000 of acres. A map has been recently published by Laurie, in which the lands purporting to be those of the company are distinguished from other lands.

158. What are the terms upon which this has been purchased?—The terms were a payment, in the first instance, of various goods, such as the natives require, but which the company regard as a merely nominal price; they have paid for their lands a much higher price than has commonly been paid by other purchasers in the first instance; but the consideration which they offer to the natives, and which they regard as the true purchase-money of the land, is the reserved eleventh, which eleventh, by means of the expenditure of the company, acquires in a very short time a higher value than all the land possessed before; as, for example, we have purchased all our lands, let me say, in New Zealand for £10,000, the price of the goods paid to the natives in the first instance; but the land which we have reserved for the natives has become, by means of our expenditure in sending out a colony, so valuable, that we could sell that reserve here in London, if it were desirable for the good of the natives, for about £30,000 now; and if the colony goes on, it is clear that within a few years from this time, the land may be worth £100,000. Supposing the whole of the company's territory to be 20 millions, the quantity reserved for the natives will be nearly two millions. I feel myself quite satisfied that if the measure were to

¹ The majority of the chiefs of New Zealand signed, and their signature was taken as binding the minority. In addition, Hobson in May proclaimed British sovereignty over the sparsely populated Middle Island (now always called South Island) and Stewart Island by right of discovery.

² The Chairman of the Committee (Lord Eliot) was favourable to Wakefield's views, and was connected with the New Zealand Company.

proceed in the best way, every acre of the land reserved would be worth at least 30s.; so that there would be an endowment of three millions sterling in the course of time, as a native provision.

209. Mr. *Tufnell*.¹] Are the natives ascertained for whom they are reserved?—In the deed of cession it is stipulated on behalf of the natives, that this land shall be reserved by the company for the benefit of the principal native families and their children. The object of the reserve was this: reserves for natives are very common things, they have been going on for 300 years, and have never done any good yet. They were made by the old colonies in America, and they have been made since by the United States, who have been in the habit of reserving a large block of land, declaring it to be a native district, and forbidding whites to settle within that district. The effect of that has been to isolate the natives from the whites, and to preserve them there in a state of barbarism. By degrees, the white population has spread round this reserved district; it has been found impossible to prevent whites from going into the district and injuring the natives in various ways, and at last the United States has been forced either to let the natives be exterminated by the pressure of the whites all round them, or to lift them up and carry them a thousand miles into the wilderness, and put them down in another reserved district, where the same process goes on again. Now the New Zealand Company having paid great attention to this subject, and feeling great anxiety about it, came to the conclusion, that if the inferior race of New Zealand can be preserved at all in contact with civilized men, it can only be by creating in civilized society a class of natives who would retain the same relative superiority of position which they had enjoyed in savage life. They determined therefore if possible to make a native aristocracy, a native gentry, and for that purpose to reserve lands as valuable property, to be given to them at some time when they shall be convinced that it may be done without risk of the property being bought away from them by all sorts of people, for a nominal consideration. The plan is to give the lands to certain individual natives, being the heads of those families from whom, as it appears by the despatch just received, Her Majesty has lately received a very solemn cession of sovereignty; a class of people already standing so much in the position of an aristocracy in their own country, that the Crown of England has most solemnly treated with them for the cession of the sovereignty of the country. That class in each district the company hope to endow with a valuable property in civilized life, believing that if they succeed in that, the natives possessing property, and thereby enjoying an equal position with the richer class of English settlers, will be able to preserve the inferior order of natives, the labouring class, from extermination. According

¹ Henry Tufnell was a Whig M.P. who had been out to Ceylon as Secretary to the Governor, Sir R. Wilmot-Horton, who was his father-in-law.

to what has hitherto always happened in other cases, if some such property as that be not created for what may be called a native gentry, it is clear that the chiefs, upon the arrival of a great body of settlers among them, will fall into the lowest state. They would part with their landed property. They have already, as to a portion of New Zealand, parted with their sovereign rights; with their right to employ slaves, for instance, which maintained them in their higher position. They have parted with all their political rights, and unless landed property be preserved for them they must come to be common labourers; they must come down to a level with the slaves; and they are perfectly aware of that, for I find by an account from New Zealand, that when Captain Hobson and others had assembled the chiefs at the Bay of Islands, for the purpose of getting a cession of the sovereignty, one of them, in a long discourse at this assembly of the native chiefs, objected to a cession of the sovereignty, saying, 'We shall lose our power as chiefs, and the end of this will be that the chiefs of this country will have to break stones to make roads for these white people,' which would be sure to happen unless means were taken to endow the superior families with a landed property in the midst of civilization. That has been the object of the company. Whether it will succeed or not is a problem that can only be solved by experience.

210. *Chairman.*] You believe that the interests of the natives are much better consulted by these reserves than any pecuniary or other consideration paid in the first instance for the acquisition of the land? —I look upon all pecuniary payments in the first instance as a mere sham; I apply the expression as much to the company as to missionaries, and to purchasers of all sorts; it is a mere pretence. Whatever it may be, it is expended in the course of a few weeks, and, instead of doing any good to the receiver, it injures him; for it gives him a great but merely temporary indulgence.

[*Mr. Dandeson Coates examined.*]

690. *Mr. Hawes.*] Are the Committee to understand you that the Church Missionary Society have never objected to the establishment of British sovereignty in New Zealand?—The course which the committee have been led to take with regard to that question is this: they were of opinion that the disorders arising in New Zealand out of the settlement upon the island of British subjects of immoral character, might be corrected by the interposition of the influence of Government. They therefore earnestly pressed that course upon the Government at home, that measures might be taken which, without interfering with the native rights of sovereignty, might bring the influence of the British Crown so to bear upon the native chiefs, as might at once put down those disorders, and gradually raise the state of New Zealand to a position in which it might be capable of sustaining its own native independence. That was the course originally

pressed by the society upon the Government; and that course they continued to pursue until these disorders appeared to have arisen to a height, and the course of colonization to be proceeding at a ratio, when that species of application of the influence of this country would probably not meet the exigency of the case. Then, as the next alternative, it was the view of the committee that the interposition of British sovereignty was requisite, resting the whole responsibility of the proceedings in the Crown, in order to secure, as far as might be practicable, the interests of the natives under that arrangement.

[*Rev. J. Beecham examined.*]¹

832. *Chairman.*] What is the feeling of the Wesleyan Missionary Society with regard to the establishment of the authority of the British Crown in New Zealand?—It is a subject which the Missionary Society have considered with great solicitude; and, on the whole, I think I am authorized to say that the committee view the proceedings of Her Majesty's Government, in sending out Captain Hobson with the powers with which he is invested, with approbation.

833. They consider that the existing state of things in New Zealand requires the interposition of some more efficient authority than any which before existed?—Certainly they do. In making this remark I presume I shall be understood to convey the idea that we adhere to the principles which we have formerly maintained, in reference to the effect of colonization in general. When I say that we approve of the proceedings of Her Majesty's Government in sending out Captain Hobson with the powers to which I have referred, I would say that we approve of it as the lesser of two evils. If colonization could have been altogether prevented, it would have been far more agreeable to the views which we entertain as a missionary society; but considering the state of things which has been produced, we are disposed now to regard this measure as perhaps the best that existing circumstances would admit.

834. Looking at the circumstances of this country, and at those of New Zealand, do you think it desirable that so small a population as that which now inhabits New Zealand should have remained its sole occupants, and emigration to it thereby prevented?—It would perhaps be fair for me to say that we look upon the subject rather as a missionary society, as a religious body, concerned for the welfare of the natives; and all history, and all past experience, show that colonization has so uniformly been injurious to the interests of the natives, that we cannot look upon colonization with anything like satisfaction.

835. May not the interests of the natives be cared for by reserving for their use a certain portion of all lands acquired by Europeans—I strongly doubt whether colonization on any plan could be made very beneficial to the natives of the country colonized.

¹ The Rev. John Beecham was Secretary of the Wesleyan Missionary Society.

LETTER FROM SOMES TO STANLEY (February 24, 1843)
[EXTRACT]¹

(*P. P.*, 1844, xiii.)

However unjust may have been some of the practices of early colonists, when unchecked by authority or public opinion, the principles on which the law of England has professed to deal with the rights of the native population of our foreign possessions are perfectly consonant with justice and humanity. The sweeping right of conquest has nowhere been asserted to the extent of dispossessing the peaceable owners of the soil. Wherever we have acquired a territory, occupied by a people whose degree of civilization had established rights of property in land, we have respected those rights to the fullest extent in which they existed, according to the notions of the country. If we acquired a portion of the French, or Spanish, or Dutch possessions, we have invariably recognized all proprietary rights which we found in existence. Whatever degree of power over property the refinement of the civil law, or the peculiar institutions of feudality might give, however complicated and intangible the rights which the various laws of inheritance, mortgage, bequest, trust or tenancy might have created, we have always respected and enforced them. The same practice has been extended to Turkey, to India, and even to countries enjoying less of regular government and civilization, provided that the laws in force had reached such a degree of perfection as to give to individuals a property in land. The Crown never thought of asserting a prerogative over the lands, either in Canada or in Oude, which it found in the possession of individuals, whether natives of the country or Englishmen, who had previously purchased under the laws of the country. But an obvious difference of circumstances necessarily led to a different practice with respect to those vast regions, which the early discoverers found occupied by scanty tribes of savages. These people, it was immediately seen, had no idea of property in land according to our notions. Particular tribes claimed a right to exclude others from making use of the lands in their neighbourhood; and may be said to have possessed such right, as long as force or fraud gave them the power of checking intrusion. But of any individual rights in the soil—of tenures whereby different degrees of advantage accrued to different persons from the same portion of land—of laws regulating peaceful sale or hereditary transmission—these people had no notion. The law of England rightly held that they could be treated as possessing rights, of which they had not even formed a conception to themselves. What rights they enjoyed and used, the law acknowledged; for it respected their

¹ Joseph Somes, the Governor of the New Zealand Company, was the greatest shipowner in London.

actual occupation. But whatever was unoccupied, was held to be unappropriated; and to this the Crown asserted its right. This is the foundation of the rights of the Crown to the waste lands of its colonies; and on the same principle, the Crown refused to recognize the validity of purchases effected from the natives; for it would have been inconsistent to treat the native as having a power of transferring rights which he did not possess, did not even understand.

Lord Normanby's plan appears to us to have been founded on a strange medley of the two principles applied by our law to the two different kinds of countries acquired by the Crown. He seems so far to have regarded the New Zealanders as a civilized people, living under regular law, as to recognize their property in the soil, to treat with them for the sovereignty of the country, and to respect the rights of native proprietors as guaranteed by the cession. Then, suddenly viewing them as savages in the eye of law, he declared all purchases from them invalid, and asserted the rights of the Crown over all lands purchased from the natives. This appears to us an anomaly sanctioned by no authority of law. If the New Zealanders had no notion of proprietary rights in land, how could such rights be acknowledged by the Crown? If they had, how could it be maintained that they had always been incapable of alienating such rights?—How could the Crown confiscate that very species of property in the hands of its own natural-born subjects, which it respects in those of its newly-acquired subjects? The Government may make what new laws it pleases to prevent purchases from natives in future. But with what show of common justice can it confiscate lands already acquired by one, under a title which it declares good for another?—It would not do so if it were taking possession of Martinique or Oude, by a cession guaranteeing individual rights; and if it treats the New Zealanders as a people enjoying property in land under known laws, it is bound to respect any property acquired under those very laws.

We, therefore, always looked on Lord Normanby's letter as based on a very anomalous, contradictory theory, reconcilable neither with sound reason nor with the acknowledged principles of our law. We knew that never had there been a case in which the absence of any regular notions of property in land was so notoriously matter-of-fact as in New Zealand.¹ Nobody has ever pretended that, according to native notions, individual rights to land have any existence. We did not believe that even the Royal power of making treaties could

¹ It was some time before either colonists or officials appreciated the Maori system of land tenure. Each native had a right, in common with the whole tribe, over the disposal of the land of the tribe, and a limited individual right to such portions as he or his parents might have regularly used for cultivations, for dwellings, or for certain other purposes. There were various recognized methods of acquiring title, some of them by no means simple. The most important fact of all was that a chief had no power himself to dispose of the land of his tribe without reference to the consent of its members.

establish, in the eye of our courts, such a fiction as a native law of real property in New Zealand. We always have had very serious doubts whether the treaty of Waitangi, made with naked savages by a consul invested with no plenipotentiary powers, without ratification by the Crown, could be treated by lawyers as any thing but a praiseworthy device for amusing and pacifying savages for the moment. But we thought it most probable, that whenever possession of New Zealand should be actually obtained by Her Majesty, the view hastily adopted by Lord Normanby would be found impracticable, and abandoned.

7

RESOLUTIONS OF HOUSE OF COMMONS COMMITTEE ON NEW ZEALAND (July 23, 1844) [EXTRACT]¹

(*P. P.*, 1844, xiii.)

1st.—THAT the conduct of the New Zealand Company, in sending out settlers to New Zealand, not only without the sanction, but in direct defiance of the authority of the Crown, was highly irregular and improper.

2d.—THAT the conclusion of the Treaty of Waitangi by Captain Hobson with certain Natives of New Zealand, was a part of a series of injudicious proceedings, which had commenced several years previous to his assumption of the local Government.

3d.—THAT the acknowledgement by the local authorities of a right of property on the part of the Natives of New Zealand, in all wild lands in those Islands, after the sovereignty had been assumed by Her Majesty, was not essential to the true construction of the Treaty of Waitangi, and was an error which has been productive of very injurious consequences.

4th.—THAT the New Zealand Company has a right to expect to be put in possession by the Government, with the least possible delay, of the number of acres awarded to it by Mr. Pennington;² that the Company has this right as against the estate of the Crown, without reference to the validity, or otherwise, of its supposed purchases from the natives, all claims derived from which have been surrendered.

5th.—THAT the Company, in selecting the land to be granted by the Crown within the defined limits, cannot claim the grant of any land not vested in the Crown.

¹ The report and resolutions were drafted by Lord Howick, the Chairman of the Committee.

² Mr. Pennington was the official of the Treasury to whom colonial business was in general referred. In 1841 the question of the number of acres to which the New Zealand Company was entitled in virtue of its agreement of November 1840 with Lord John Russell, whereby every pound expended entitled it to four acres of land, was referred to him for arbitration.

6th.—THAT means ought to be forthwith adopted for establishing the exclusive title of the Crown to all land not actually occupied and enjoyed by Natives, or held under grants from the Crown; such land to be considered as vested in the Crown for the purpose of being employed in the manner most conducive to the welfare of the inhabitants, whether Natives or Europeans.

7th.—THAT in order to prevent land from being held by parties not intending to make use of the same, a land-tax, not exceeding 2*d.* an acre, ought to be imposed; that all parties claiming land should be required to put in their claims, and pay one year's tax in advance, within twelve months.

8th.—THAT such tax ought not to be considered as applying to the whole estate of the New Zealand Company, so long as they shall continue to sell not less than one twenty-fifth of the land granted to them annually, and to expend a fixed proportion of the proceeds in emigration.

9th.—THAT such tax ought also not to be considered as applying to lands now actually occupied and enjoyed by the Natives, or to reserves set apart and held for their benefit.

10th.—THAT reserves ought to be made for the Natives, interspersed with the lands assigned to settlers, with suitable provision for regulating their alienation and preserving the use of them for the Natives as long as may be necessary; and that these reserves ought not to be included in calculating the amount of land due to that Company.

11th.—THAT as it appears by Evidence, that the non-settlement of the Land Claims has been productive of great confusion and mischief in the colony, it is expedient to adopt measures for granting legal titles with the least possible delay to the actual occupants of land, unless under special circumstances of abuse.

12th.—THAT the prohibition to all private persons to purchase land from the Natives ought to be strictly enforced, except that land which may have been purchased by Natives they should be at liberty to sell again, provided the transaction be sanctioned by the Protector.

13th.—THAT it is highly important that the Governor should have more effectual means of enforcing obedience to his authority, and also greater facility for visiting frequently the different settlements; and that with this view it is expedient that an armed steamer, of moderate size, be placed at his disposal.

14th.—THAT it is expedient that the settlers should be organized as a militia, under the orders and control of the Governor; Natives, under proper precautions, being allowed to serve in it.

15th.—THAT it is expedient that an attempt should also be made to raise and discipline a native force of a more permanent character, officered in general by Europeans, but in which any of the Natives who may be found trustworthy may hold commands.

16th.—THAT the employment of Natives in the civil service of the Government, in any situations in which they can be useful, is highly desirable.

17th.—THAT efforts should be made gradually to wean the Natives from their ancient customs, and to induce them to adopt those of civilized life, upon the principle recommended by Captain Grey, in his Report on the mode of introducing Civilization amongst the Natives of Australia.

18th.—THAT the principles in which the New Zealand Company have acted in making the reserves for the Natives, with a view to their ultimate as well as present welfare, and in making suitable provision for spiritual and educational purposes, are sound and judicious, tending to the benefit of all classes.

8

DESPATCH FROM LORD STANLEY TO CAPTAIN FITZROY [EXTRACTS] ¹

(P. P., 1845, xxxiii.)

Downing-street, 13 August 1844.

SIR,

In my despatch, No. 27, of 30th ultimo, I enclosed to you the report and proceedings of the Committee of the House of Commons, appointed to inquire into the state of New Zealand, and into the proceedings of the New Zealand Company. On reference to the proceedings, you will perceive that the Committee were far from unanimous in their opinions, and that some of the most important of their decisions, including one upon the selection between two sets of Resolutions, as the basis of their Report, were sustained by very narrow majorities.

Nevertheless, I cannot but apprehend that this Report, carrying with it, as it must be admitted to do, the authority of a Committee of the House of Commons, may add to the difficulties of your position, less indeed by the practical measures which it recommends than by the principles which it lays down, and on which it proceeds,—principles which I know to be opposed to your own views, and which, if you were to attempt to carry them into practice, would, I fear, lead to most unhappy consequences.

The Report, you will observe, proceeds upon the assumption that

¹ Robert FitzRoy, half-brother of Sir Charles (see above, p. 93, note 1) and grandson of the third Duke of Grafton and of Lord Castlereagh, was Governor of New Zealand from 1843 to 1845: the two years were sufficient to reduce the colony to utter confusion. Yet as a surveyor—he commanded the *Beagle* on its famous voyage—and as a meteorologist—he was in later life chief of the meteorological department of the Board of Trade—he achieved considerable distinction. His lack of balance more than neutralized his ability and made him quite unfitted to be a Colonial Governor. In 1865 he committed suicide.

'the uncivilized inhabitants of any country have but a qualified dominion over it, or a right of occupancy only, and that until they establish amongst themselves a settled form of Government, and subjugate the ground to their own uses by the cultivation of it, they cannot grant to individuals, not of their own tribe, any portion of it, for the simple reason that they have not themselves any individual property in it:' and the Committee add, 'that if the view which they have thus taken of the right of the Crown to the whole of the unoccupied soil of New Zealand, and of the nullity of all private purchases of land from the natives, be a correct one, and if this were also the view of the then Secretary of State¹ at the time that the arrangement with the New Zealand Company was concluded, it follows, as a matter of course, that by that arrangement it must have been intended to give to the Company a claim, binding in good faith upon the estate of the Crown to the number of acres awarded to them by Mr. Pennington, and that this claim could not in any way be affected by the character of those supposed purchases from the natives, which it was the very object of the whole arrangement to set aside as altogether null and invalid.'

I am not sure that were the question one of mere theory, I should be prepared to subscribe unhesitatingly, and without reserve, to the fundamental assumption of the Committee; and I am sure that it would require considerable qualification, as applicable to the aborigines of New Zealand. There are many gradations of 'uncivilized inhabitants,' and practically, according to their state of civilization, must be the extent of rights which they can be allowed to claim, whenever the territory on which they reside is occupied by civilized communities. And it cannot be denied that, among 'uncivilized nations,' the New Zealanders hold a very high place, certainly far above the inhabitants of the other Australian Colonies.

The aborigines of New Holland generally are broken into feeble and perfectly savage migratory tribes, roaming over boundless extents of country, subsisting from day to day on the precarious produce of the chase, wholly ignorant of or averse to the cultivation of the soil, with no principles of civil government, or recognition of private property, and little, if any, knowledge of the simplest forms of religion, or even of the existence of a Supreme Being. It is impossible to admit, on the part of a population thus situated, any rights in the soil which should be permitted to interfere with the subjugation by Europeans of the vast wilderness over which they are scattered; and all that can be required by justice, sanctioned by policy, or recommended by humanity, is to endeavour, as civilization and cultivation extend, to embrace the aborigines within their pale, to diffuse religious knowledge among them, to induce them, if possible, to adopt more settled modes of providing for their subsistence, and

¹ Lord John Russell.

to afford them the means of doing so, if so disposed, by an adequate reservation of lands within the limits of cultivation. But the position of the New Zealanders of the Northern Island, at the time of its occupation by Great Britain, was the reverse of all this. Comparatively speaking, their territory was not of vast extent, though unquestionably far more than sufficient, under any circumstances, for the actual population. Their main, though not their sole subsistence, was derived from agriculture, rude, indeed, but continuous: rights of property, as between tribe and tribe, and of individuals of each tribe *inter se*, were recognized and well understood; they had been for many years in intercourse with English traders and with Christian missionaries; many of them had adopted Christianity; many were acquainted with the English language and with letters, and at this moment a Maori Gazette is published in New Zealand, and widely circulated among them.

I cannot think that it would be either just or practicable to apply the same rule, with regard to the occupation of land, to classes of aborigines so widely differing from each other.

But whatever may be the right theory, it is indisputable that in practice a distinction has been drawn by the Acts of the British Government.

The extent to which native rights to land might be admitted was, as you may remember, matter of frequent and anxious discussion between us previous to your departure from England; and you are aware that, feeling the information necessary for the purpose not to be within my reach in this country, I constantly refused to the New Zealand Company to define authoritatively here so difficult and important a question. On the one hand, to restrict those rights to lands actually occupied for cultivation appeared to me wholly irreconcilable with the large words of the treaty of Waitangi: 'lands and estates, forests, fisheries and other properties which they may collectively or individually possess,' and of which, 'the full exclusive and undisturbed possession' is thereby 'confirmed and guaranteed to them.' The claim of the Crown to all 'unoccupied' land, to the exclusion of the natives, appeared to me not less at variance with the directions of the Marquis of Normanby to Captain Hobson, 'to obtain by fair and equal contract with the natives the cession to the Crown of such waste lands as may be progressively required for the occupation of settlers,' and to apply the proceeds of the 're-sales of the first purchases' to the provision of funds necessary for future similar acquisitions. It must be remembered, that these directions had not only been promulgated, but acted upon in the colony at an early period after the sovereignty had been assumed.

Lastly; it appeared to me inconsistent with the practice of these tribes, who, after cultivating, and of course exhausting, a given spot for a series of years, desert it for another within the limits of the recognized property of the tribe.

On the other hand, I had no doubt that on your arrival in New Zealand, you would find that there were considerable tracts of country to which no tribe could establish a *bonâ fide* title; and still more extensive districts, to which, by personal communication with the chiefs, you would obtain a title on easy terms and by amicable arrangements. I had thus in some measure anticipated the wish of the Committee, but I cannot go with them in directing you 'forthwith to establish the title of the Crown to all unoccupied land,' except, indeed, under the extensive qualification of the following words of the Report, 'as soon as this can be safely accomplished.' . . .

Before I quit this subject, I must add, that with every wish to maintain for the natives all their just rights, I cannot but think that some of those by whom they have been advised have formed, and encouraged them to form, exaggerated notions of the value of land, and have sanctioned claims for compensation which certainly appear extravagant. I have not received accounts of any circumstances of this kind subsequent to your arrival in the colony; and I am sure that you would feel it your duty to discourage any exorbitant or unreasonable demands upon the settlers, by whose presence and exertions, it must be remembered, the present high value has been given to the possession of land which before the arrival of Europeans bore a very inconsiderable money value. It would, I think, be easy to show, that while it is our bounden duty to protect the natives against aggression, it would not tend to their real advantage to encourage them to expect inordinate payments for their land, while such a system must have the effect of checking the spread of European immigration, on which, if properly controlled and regulated, the prosperity of New Zealand as a British possession must mainly depend.

9

DESPATCH FROM FITZROY TO STANLEY

(*P. P.*, 1845, xxxiii.)

Auckland, 14 October 1844.

MY LORD,

In the Gazette, which I have the honour of transmitting with this despatch, and the enclosed Minutes of Council, is a proclamation respecting the purchase of land from the aboriginal natives of New Zealand, which I have deemed it not only prudent, but absolutely necessary to issue, in order to prevent insurrection.¹

During the last two years there has been a growing desire on the

¹ The proclamation (dated Oct. 10, 1844) declared that application might be made to the Governor for the waiver of the pre-emptive right of the Crown over a tract of land, and that if it were approved no fees should be payable except 1*d.* per acre on the issue of the Crown grant. Though the proclamation was disallowed by Lord Stanley, claims had of course been made meanwhile and had to be met.

part of the natives to dispose of their own lands at their pleasure, irrespective of all interference or control. This desire has been industriously stimulated by settlers, who have not only reminded them of the treaty of Waitangi, but have continually taunted them with being no better than slaves, while the provisions of that treaty remain unexecuted.

The natives have been repeatedly told that they gave to the Queen of England 'te nokonga,' the 'option of purchase,' but they did not, in their own language, give Her Majesty the sale and exclusive right of purchase; that the words of the English treaty, 'exclusive right of pre-emption,' were not translated correctly, and have a meaning not generally understood by the natives, who never would have agreed to debar themselves from selling to private persons, if the Government, on behalf of Her Majesty, declined to purchase.

The attention of the natives has also been repeatedly, I may say frequently and purposely, drawn to the last article of the treaty of Waitangi, by which Her Majesty 'imparts to them all the rights and privileges of British subjects;' and they have been told that while unable to sell their own land, that article is not executed, and they are no better than slaves (*taukareka*) taken in war, who have not the disposal of their own lands, while occupied by their conquerors.

Unfortunately, the facts of the case go far to support the above assertions; and to such an extent has the feeling grown among the natives, excited in every part of the country by designing persons, some of whom are aiming at the expulsion of the Government which interferes with their individual objects, that I am absolutely certain that a serious interruption of tranquillity, tending to destroy confidence, and bring on hostilities, would be the consequence of a course of conduct different from that which I now believe it to be my duty to pursue, however startling and unauthorized such a course must appear to your Lordship until explained.

To show further how this mischief has been fomented, and would be much increased, I have to state, that a number of persons have lately subscribed a large sum as a reward for whomsoever should do most towards stirring up and informing the natives how to act together on this subject.

During my visit to the southern settlements, it was intended to agitate in the northern parts of the country, in order that on my return I might find the stream of popular feeling too strong to oppose effectually.

I have known of the existence and growth of these feelings for some time, as your Lordship is aware; but I hoped that answers might have been received by me to my despatches of April last,¹

¹ These despatches referred in particular to the earlier proclamation of March 26, which permitted the waiver of the right of pre-emption but required a fee of 4s. per acre, and another payment of 6s. per acre on the issue of the Crown grant. This concession merely whetted the appetites of the speculators.

before taking so important a step as that of allowing the aboriginal natives of New Zealand to sell their lands, without the payment of any concurrent fee to Government.

I have ventured, my Lord, to take this step in the fullest appreciation of all the consequences.

It may be right that I should individually be censured for what I have done, and even that I should be forthwith superseded. At such a decision I shall not be surprised.

But discarding personal considerations, let me entreat your Lordship to dismiss from your mind the thought of its being possible to maintain a pacific and friendly policy towards the New Zealanders, without allowing them to sell their land to private persons.

By the restrictions hitherto imposed on this sensitive, jealous and warlike people, in respect of trade, and the unexpected barrier raised against their sale of their own lands, a general rebellion against the authority of Her Majesty has been already well-nigh caused; and would unquestionably be raised from one end of the country to the other, if a stop were put to the limited sale of land to private individuals, or if the restrictions of customs' regulations were re-established.¹

I have, &c.

(signed) ROBERT FITZROY,
Governor.

IO

DESPATCH FROM GEORGE GREY TO EARL GREY (April 7, 1847) [EXTRACT]

(*P. P.*, 1847-8, xliii.)

The extent of land now purchased by the Government, in the Middle Island, is so large that, in reference to its quantity and value, the payment made for it cannot but be regarded as small, and the proportionate amount to be refunded by the New Zealand Company, if the Government should require them to defray some portion of the expense of this purchase, cannot amount to any important sum: however, I have again to repeat in this instance, that I spared myself neither anxiety, exertion, nor care to make the best arrangement I could.

I have yet to beg your Lordships' attention to the following general remarks upon the subject of the settlement of these land questions. I was not required to undertake this duty; a Commissioner was sent

¹ A month previously the Legislative Council had passed ordinances abolishing the customs duties and imposing a tax on property instead. Despite all these efforts to appease the natives, early in 1845 Kororareka was burnt by the native chief, Hone Heke, and the first Maori War began. Disillusioned, the Governor passed an ordinance at the next session of the Council reimposing the customs duties.

out from England to perform it for me;¹ but the Lieut.-General commanding in New South Wales² thought proper to deprive me of the services of that officer. After I had been for more than fifteen months in the colony, I found that the agent of the New Zealand Company³ was making no effort to acquire the tracts of land required by the Company to fulfil their engagements; and, as great distress from the non-settlement of their land-claims existed amongst the settlers, and as it was impossible for the country to settle down into a thoroughly tranquil state until these questions were definitely arranged, and Her Majesty's Government had so repeatedly urged upon myself and my predecessors the necessity of a prompt adjustment of them, I felt it to be my duty, although I would most gladly have avoided engaging in so difficult and ungracious a task, to make the most advantageous settlement of these questions which I could effect.

I should also observe that the position I understand to be adopted by the New Zealand Company's Agent, that if tracts of land are not in actual occupation and cultivation by natives, that we have, therefore, a right to take possession of them, appears to me to require one important limitation. The natives do not support themselves solely by cultivation, but from fern-root,—from fishing,—from eel ponds,—from taking ducks,—from hunting wild pigs, for which they require extensive runs,—and by such like pursuits. To deprive them of their wild lands, and to limit them to lands for the purpose of cultivation, is in fact, to cut off from them some of their most important means of subsistence, and they cannot be readily and abruptly forced into becoming a solely agricultural people. Such an attempt would be unjust, and it must, for the present, fail, because the natives would not submit to it: indeed they could not do so, for they are not yet, to a sufficient extent, provided even with the most simple agricultural implements; nor have they been instructed in the use of these. To attempt to force suddenly such a system upon them must plunge the country again into distress and war; and there seems to be no sufficient reason why such an attempt should be made, as the natives are now generally very willing to sell to the Government their waste

¹ On August 15, 1845, Lord Stanley informed the Governor that a competent person would be appointed to give 'his best assistance to the Company in their selection of land, to aid in surveying the exterior boundaries of such selections, and to judge of the reasonableness of the terms of any purchase which the Company may make from the natives', and on Dec. 18, that Major M'Cleverty, who had recently been appointed Deputy Quartermaster-General in Australia, had been selected for the office.

² Sir Maurice O'Connell, who had been Commander of the Forces in New South Wales since 1838.

³ William, the younger brother of Edward Gibbon Wakefield, with whom he had been associated in the abduction of Miss Turner. He had afterwards served in the Portuguese and Spanish armies and rose to the rank of colonel in the latter. As Principal Agent of the New Zealand Company from 1839 to 1848 he made mistakes, notably in his hasty 'purchase' of land from the natives shortly after his arrival, but on the whole showed himself well fitted to be the leader of a colonizing venture.

lands at a price, which, whilst it bears no proportion to the amount for which the Government can resell the land, affords the natives (if paid under a judicious system) the means of rendering their position permanently far more comfortable than it was previously, when they had the use of their waste lands, and thus renders them a useful and contented class of citizens, and one which will yearly become more attached to the Government.

I am satisfied, that to have taken the waste lands I have now purchased by any other means than those I have adopted, would once more have plunged the country into an expensive war, which, from its supposed injustice, would have roused the sympathies of a large portion of the native population against the British Government, and would thus probably have retarded for many years the settlement and civilization of the country.

II

DESPATCH FROM SIR GEORGE GREY TO EARL GREY (July 9, 1849) [EXTRACT]

(*P.P.*, 1850, xxxvii.)

Any attempt to form, in those portions of these islands which are densely peopled by the natives, an ordinary European settlement, the inhabitants of which produced all they required, and were wholly independent of the native race, must end in failure. The natives in the vicinity of such a settlement, finding themselves excluded from all community of prosperity with its inhabitants, would soon form lawless bands of borderers, who, if they did not speedily sweep away the settlement, would yet by their constant incursions so harass and impoverish its inhabitants, that they would certainly soon withdraw to the neighbouring Australian settlements, where they could lead a life of peace and freedom from such incursions. Upon the other hand, however, it would appear that a race such as has been described could be easily incorporated into any British settlement with mutual advantage to both races; the natives supplying agricultural produce, poultry, pigs, and a constant supply of labour (although yet rude and unskilled), whilst, upon the other hand, the Europeans would supply the various manufactured goods required by the natives, and provide for the manifold wants created by their increasing civilization. Such a class of settlements might easily grow into prosperous communities, into which the natives, with characters softened by Christianity, civilization, and a taste for previously unknown luxuries, would readily be absorbed.

The questions to be solved have therefore been, how to induce the native race cordially to assist in the attempt to create so desirable a state of things, and how to provide the funds requisite for governing

so many isolated settlements, spread over so vast a tract of difficult country, the intervals between which are occupied by so warlike a race, over whom it was necessary to exercise some control? It is worthy of remark here, that the united population of New Zealand is as large as that of New South Wales has, until very recently, been, and that it is a population, from its mixed and peculiar elements, infinitely more difficult to govern than that of New South Wales, whilst the cost of the machine of government is greatly increased from the number of the settlements and their distance from each other. In point of fact, the several settlements are distinct colonies, and both in the difference of feelings and interests of the Europeans, and of the respective native tribes inhabiting each, differ much more widely from each other than many British colonies do. It appears, therefore, that it would be imprudent and unjust to attempt to draw any parallel in these respects between New Zealand and any other British colonial possession.

In carrying out any plan, having for its object the amalgamation of the two races, the following difficulties have, until recently, presented themselves:—

1stly. Hostile encounters had taken place between the settlers and the natives in the south of New Zealand, and between Her Majesty's forces and the natives in the northern portion of the country, in all of which the number of killed and wounded on our side had been comparatively so large, and the loss of the enemy so small, that they had been led to form an exaggerated notion of their own prowess and strength, and a desire of emulating the example of those chiefs who were imagined by their countrymen to have gained great successes, had excited a spirit of exultation and dissatisfaction throughout the greater portion of the islands, so that whilst a rebellion was actually raging in one portion of the islands, it was too probable that the natives would speedily break out into similar excesses in other portions of them.

2ndly. Disputes existed between the settlers and the natives in various places regarding their respective rights to certain lands. These disputes, relating to the personal interests of the parties concerned, created between them a feeling of hostility and bitterness which was gradually raising race against race, and which threatened ultimately to become a feeling which could only be put a stop to by the extermination of one part or the other.

3rdly. As a necessary result of the difficulties existing under the two previous heads, the revenue had almost disappeared, and by the issue of paper money, a large debt had been contracted; there was thus an absence of the funds requisite for the re-establishment of order and good government, whilst the settlers had also, to a great extent, lost all confidence in their future prospects, and were in a disheartened and desponding condition.

4thly. A very great difficulty had been created by the Crown's right

of pre-emption having been waived in favour of certain individuals over large tracts of land, and by the inordinate demands of other persons to extensive tracts of country having been entertained by the Government, the result of which was, that a party of land claimants had been called into existence who made demands so extravagant and illegal that no Government could accede to them, nor did it appear practicable to make a settlement of these claims, even upon the most liberal basis, without incurring for the Government such a degree of hostility from a large number of persons as would probably exceedingly embarrass and impede any subsequent administrations.

In determining the line of policy the Government should pursue in reference to the first class, of the difficulties above named, that is, in reference to the war which existed in New Zealand, and the rebellion which appeared likely to break out, the following considerations seemed naturally to present themselves:—

It appeared to be clearly the duty of the Government, in a firm and decided manner, to crush the existing rebellion, and to put down without delay any disturbances which might afterwards break out; but yet it also seemed clear that its ruling line of policy should be not to embark in any operations in which an absolute certainty did not exist of speedy and complete success, and rather to delay engaging in hostilities which might appear necessary than hurriedly to embark in any contest the result of which could not be foreseen.

Indeed, delay in engaging in hostilities was, wherever practicable, obviously the first duty of the Government of this territory. No knowledge of the country of such a nature as to enable an officer to move with certainty a body of troops even to a few miles from any of our settlements, was possessed by the Government.

The number of persons who possessed a competent knowledge of the native language was so few that it was impossible to secure the services of the requisite number of interpreters. The two races had so recently been brought into close contact, that their ignorance of their respective appearance, of their language, customs, and manners, filled them with mutual distrust, whilst their disputes, in relation to land, embittered their feelings of hostility. It appeared very probable that as the two races became more accustomed to each other, as their knowledge of each other's language and customs increased, and as their private differences were adjusted, so would all necessity for war and conflict between them wear away; whilst, should these anticipations of a delay in military operations rendering a war unnecessary, prove correct, it would clearly have been an uncalled-for measure of severity to hurry on a contest with the natives. And in the case of each individual who fell in such a conflict, it might have been said that from his ignorance a man had been destroyed whom a few months' enlightenment would have rendered a good subject, a valuable consumer of British manufactured goods, and a contributor

to the revenue. The loss to Great Britain by engaging in an unnecessary war would also have been great; every 100 soldiers that had fallen must have cost at least 10,000*l*. Moreover, Great Britain, in despatching two regiments to this country, had made great exertions, which it could not continue or repeat without considerable inconvenience to the public service. Yet even a very few false movements might have entailed so considerable a loss upon the small force in this country as to have rendered large and continued reinforcements necessary. It is perhaps not too much to say, that during a considerable period of time any signal failure in an operation which had been entered upon, would have led to a simultaneous and almost general rising, the effects and cost of which may easily be conceived.

It was also certain that even if the anticipations which had been formed of the benefits which might spring to both races from delaying military operations had not been realized, and it had proved ultimately necessary to embark in a war, yet that each month's delay, by increasing our knowledge of the country and of the native language, and by enabling us to complete our roads and to consolidate our establishments, would be of the greatest advantage to Great Britain, by enabling it to enter on the contest with greater means and more certainty of success.

Mercy, justice, and prudence, all appeared therefore to point to delay as the general rule on which the Government should act. This line of policy has therefore been in all instances unswervingly pursued, and the result has quite equalled the anticipation which might reasonably have been formed; for whilst the rebellion which existed and the disturbances which naturally sprung from that rebellion have been in all instances crushed, the total loss, of all ranks, sustained on our side through so long a period of time has amounted to only 28 killed and 53 wounded; and in as far as human judgment can form an estimate of such matters, no probability exists of any extensive rebellion ever hereafter breaking out in the country, and even should such disturbances again unhappily break out, our knowledge of the country is now so much more accurate, our alliances with the natives have become so much more numerous, our military roads have already been so far completed, the number of persons acquainted with the native language and customs so increased, and the natives' supplies of arms and ammunition have been so much diminished, that we should enter on such a contest with infinitely greater advantages than we formerly possessed.

The efforts which have been made by the Government of this country for the removal of the second class of difficulties alluded to were of two kinds:—

1st. The resumption of the Crown's right of pre-emption, which had unfortunately been abandoned, and—

2nd. The adjustment of many of the almost innumerable land

questions which existed. The task of resuming the Crown's right of pre-emption appeared to be one of great difficulty and danger, but the natural good sense of the natives, and their continually increasing confidence in the Government, have rendered its accomplishment much less difficult than was anticipated. The various steps which have been taken for the adjustment of the disputes in reference to land have been so fully detailed in the Despatches from the various authorities, and the large mass of documents which have been transmitted to the Home Government, that it may be unnecessary to say more than, that with very few and trifling exceptions, every land question in the southern province has been already disposed of, whilst in the northern province nearly all questions connected with lands have been also arranged, with the exception of those which, resting upon grants issued by the Crown, can only be dealt with by our Courts in the ordinary manner.

The measures taken to remedy the difficulties detailed under the third head, namely, the want of a revenue, the existence of a depreciated paper currency, and the failure which had taken place in the confidence and expectations of the settlers, have also all been fully detailed in the Despatches which relate to those subjects. The objects contemplated by the Government, in reference to these subjects, may be generally stated to have been the imposition of duties which, by a system of indirect taxation, might raise from the native as well as from the European population a revenue which would increase with every successive step of their advancement, and yearly yield the means for their more efficient control and government, whilst in aid of and in connexion with these plans the depreciated paper currency was partly withdrawn, and the remaining portion of it was converted into a funded debt.

In order to remedy, in as far as possible, the evils enumerated under the 4th head, namely, the difficulties which had been created by the Crown's right of pre-emption having been waived in favour of certain individuals over large tracts of land, and the claims of others having been entertained to enormous tracts of country, every effort has been made to adjust these claims upon the most liberal terms, and to carry out these arrangements in the most conciliatory manner; this being, however, one of those cases in which individuals have been led to form extravagant expectations which it was impossible for any Government to realize, no efforts could probably have prevented much disappointment and bitterness of feeling ensuing, and it is probable that nothing but time can completely eradicate this evil, although, from the settlement of so large a number of these claims, and from the arrival of so many disinterested persons in the colony, the proportionate number of individuals, whose expectations have been disappointed, is gradually decreasing, and their influence, as a party, will soon cease to be felt.

But little would, however, have been accomplished if the Government had confined itself simply to an attempt to remove the various evils under which these islands were labouring. It was necessary that active measures should at the same time be taken, without delay, for the amalgamation of the two races; that the confidence of the natives should be won; that they should be inspired with a taste for the comforts and conveniences of civilized life; that they should be led to abandon their old habits; that the chiefs should be induced to renounce their right of declaring peace and war; and that the whole of the native race should be led to abandon their barbarous modes of deciding disputes and administering justice, and should be induced for the future to resort to our Courts for the adjustment of their differences and the punishment of their offenders.

Thoroughly to accomplish a change of this nature would require a long series of years and a succession of generations.

The utmost, therefore, that any Government could hope to do was to establish institutions which might imperceptibly but certainly lead to so complete a change of manners in a barbarous nation as was contemplated; and to secure these institutions by such laws and by such a constitution as appeared to afford a reasonable guarantee for their perpetuity, the first step to be taken to ensure these ends appeared to be, to convince the natives that our laws were better than their own, as affording more perfect security for life and property, and a much more ready means of adjusting differences which might arise either between natives and Europeans or amongst natives themselves.

To attain these ends the Resident Magistrate's Ordinance was passed, and Mixed Courts were constituted for the settlement of disputes betwixt natives. At the same time a considerable number of their young chiefs and most promising young men were enrolled in an armed police force, and thus habituated to act as actual administrators in the lowest offices of the law, and were made acquainted with the practical administration of the law in our inferior Courts. This latter measure, at the time it was introduced, excited unbounded ridicule, yet probably no measure has been so totally successful in its results. The native armed police force has furnished gallant men who have led our skirmishing parties and who have fallen like good soldiers in the discharge of their duty; and it has furnished intelligent, sober, and steady constables, whose services, under various circumstances, have been found of great utility. The actual result of the two measures combined is sufficiently attested by the number and importance of the cases in which natives were concerned which have been recently decided by our tribunals, to which until lately the natives never resorted.

To bring the natives under the influence of the Government, and to gain their confidence and attachment, various measures have been

resorted to by the Government. Hospitals have been established in the principal districts to which both races have been equally admitted, and in which they have been tended with equal care; savings'-banks have been instituted for the benefit of both races; a considerable number of natives have been employed in the minor offices of the Government establishments; pensions have been conferred on those chiefs who, during the first rebellion, were most distinguished by their gallantry, fidelity, and devotion to the British cause. Large numbers of natives have been employed on public works and in the construction of roads, thereby securing to the colony the advantage of excellent lines of communication, whilst, from the discipline maintained amongst those employed upon public works, those works formed in fact industrial schools, in which the natives were trained to European habits of order and obedience, were accustomed to use European tools instead of their own rude implements, and were thus gradually trained to become useful labourers for the colonists. The natives have also been encouraged to pursue improved modes of husbandry, to construct mills, to acquire vessels, to attend to the breeding of cattle and horses, and a newspaper is fortnightly published by the Government, for the purpose of giving them useful information and plain practical directions on all those points to which the Government is anxious they should direct their attention.

These various measures may be, however, said to aim only at the present improvement and advancement of the native race, and to make no adequate provision for their continual advancement in the arts of civilized life, and for the education of the native children upon such a system that they might have a prospect of standing on terms of equality with the European race, and of understanding and speaking their language.

Fortunately the task of the Government in this respect has been an easy one. There existed in this country three missions, established by different Christian denominations, amongst whom there is, perhaps, an emulation as to which should achieve the greatest amount of good, and it may reasonably be doubted whether at any period of the world there has existed in one country, amongst so large a number of men who had devoted themselves to the holy calling of a missionary so many persons who were eminently qualified by piety, ability, and zeal to discharge the functions of the office upon which they had entered: the result has been that these gentlemen, scattered throughout the country, have exercised an influence without which all the measures adopted by the Government would have produced but little effect. Won by their teaching, the natives have almost as an entire race embraced Christianity,¹ and have abandoned the most

¹ Later there was some reaction against Christianity, culminating in the hybrid religion of the so-called 'Hauhaus' in the Maori Wars; but it remains true that the conversion of almost the entire Maori race is a remarkable fact, redounding to the credit of Maoris and missionaries alike.

revolting of their heathen customs. Instructed by the missionaries, probably a greater proportion of the population than in any country in Europe are able to read and write; and encouraged by the precept and example of the same gentlemen, they have, in all parts of the islands, made considerable progress in the rougher branches of civilized life. The Government, therefore, in establishing schools thought it most desirable not to attempt to set up a system of its own which might have required years for its development (during which a generation might have melted away, and an opportunity have been lost which could never be recalled), but rather to join its exertions to those of the missionaries, and to endeavour, whilst it established its own educational institutions, to render the system of the missionaries more complete and effective than hitherto. It therefore provided considerable funds which should be set apart for educational purposes, but determined that these funds should be applied under the direction of the heads of the different denominations who had missions established in New Zealand; it being provided that the several institutions which received any portion of these funds should be conducted upon the industrial system; that the English language should be taught there, and that a sound religious education should be imparted to the pupils. Provision was also made for the appointment by the Government of inspectors who will examine into the state of the schools, and will ascertain that the various requirements which are imposed by the laws relating to these institutions are strictly complied with.

All these measures appeared calculated to secure a permanent and constantly increasing, instead of a scanty and superficial civilization for the native population; and in order still further to increase the chances of success, two laws were passed, the first of which prohibited the natives from procuring arms or ammunition, and the second of which debarred them from the use of spirituous liquors. These regulations appeared stringent and likely to create discontent, but it was thought probable that, united with so many other measures of a character which were agreeable to the natives, and clearly calculated to promote their welfare, their strong natural good sense would lead them to see that these more distasteful restrictions had originated in the same care for their welfare, as had suggested the other portions of the system, and the result has justified the anticipations which were formed, as they have, without complaint, acquiesced in these regulations, and generally and cheerfully acknowledge their beneficial tendency.

In the course of the past 18 months the natives have, on several occasions, shown in the most striking manner their increasing confidence in our institutions, and their knowledge of the rights they have gained by their incorporation into the British Empire, by carefully considering the effect that proposed measures are likely to have upon

their future welfare, and by evincing their gratitude or dissatisfaction by forwarding congratulatory addresses for benefits received, or by transmitting memorials against proposed measures to the Queen, on whose justice and desire to promote their welfare they evidently relied with the most implicit confidence.

The most cursory consideration of the large number of objects which the Government proposed to itself, in carrying out the system of policy which has just been detailed, must have shown that it relied upon receiving, at least for some years, considerable monied assistance from some extraneous source, until the improvement which might naturally be looked for in the internal traffic and external commerce of the colony had so far improved the revenue that it would suffice to defray the necessary expenditure of the Government.

Such assistance was, in point of fact, most generously supplied by the Imperial Parliament, and it hence became an important object for the local Government so to conduct the financial operations of the colony that it might, at the earliest possible period, dispense with the assistance which was afforded to it, and thus cease to be a burden upon the parent state which had so liberally aided it during its early struggles. This end may be said to be so far attained, that in the ensuing year the resources of the country will suffice to defray the whole of its expenditure with the exception of 15,000*l.*, if the proposed financial operations are approved of which were detailed in the Despatch named in the margin, whilst, as in each succeeding year, an increase of revenue may be looked for, and no corresponding increase in the expenditure will be requisite, the amount of assistance received from Great Britain can be still further rapidly diminished in each year subsequent to 1850.

In order that every guarantee might be afforded that the state of prosperity to which these colonies were attaining might have a character of permanency, it was still necessary that institutions should be devised which would ultimately constitute a form of government which was likely to be adapted to the circumstances of this country, and to be satisfactory to its mixed and peculiar population. It also appeared to be a matter of great importance, that continual advances should be made towards such institutions, so that their introduction might be gradual, and that they might, as it were, imperceptibly grow with the growth of the colony.

Such a form of institutions had already in their main outline been sketched by your Lordship, and these in their main features presented a constitution than which nothing better could be devised here, although alterations in the details appeared necessary to adapt them to this country, and to the feelings of its inhabitants. These alterations were made, and the form of constitution which appeared best adapted to New Zealand was fully reported on in the Despatches named in the margin, whilst several steps preparatory to their intro-

duction have already been taken in this country, and in point of fact, with the exception that the assemblies, instead of being elective, are nominated by the Crown, the proposed system may be said already to be in full operation in New Zealand. The great error which the local Government is in this respect thought by one party in the colony to have committed, is too great a delay in introducing the elective principle. It may, perhaps, upon the other hand be urged that, looking to the peculiar condition and population of this country, it is better to err on the side of prudence, and not to incur the risk of the fearful evils which would ensue from another rebellion for the sake of acquiring one or two years earlier that which must certainly within so short a period be obtained.

12

DESPATCH FROM GORE BROWNE TO MOLESWORTH

(February 14, 1856) [EXTRACT]¹

(*P. P.*, 1860, xlv.)

If the management and control of the natives were not complicated by their intercourse with Europeans, little or no difficulty would be felt; but unfortunately the interests of the two races are antagonistic; nor can I disguise from myself that elements of discord between them are in existence, and that imprudent legislation or interference with the rights of the Maoris would fan them into a flame not easily extinguished.

Those who are best acquainted with and most inclined to favour them, admit that drunkenness and immorality are greatly on the increase, and that the influence of the missionaries, which, though sometimes used inconveniently, has been on the whole greatly advantageous to both races, is proportionally on the decrease.

In remote districts, where the Maoris are numerous, foreigners, unprincipled adventurers, deserters, or escaped convicts, smuggle gunpowder and large quantities of spirits for their use, and purposely endeavour to make mischief in the hope of securing advantages to themselves. Nor is the intemperate use of spirits by any means confined to the natives, for under its influence, or that of its consequences, delirium tremens, three natives have been killed by Europeans during the past year, and in each case the excitement (*vide* Despatch No. 14 of the 14th instant) among the native tribes in the neighbourhood has been such as to give considerable cause of anxiety for the safety of our scattered and defenceless settlers in the interior of the country.

The Maoris (as I have before said) have much more land than they

¹ Colonel Thomas Gore Browne was promoted from the Governorship of St. Helena to that of New Zealand in 1854. He remained in New Zealand until 1861, and was afterwards Governor of Tasmania. He was a man of ability and high character, and extremely popular.

can use beneficially; they are excessively attached to its possession, and extremely jealous of any encroachment on it. The English, on the other hand, are in want of land, and too many view the natives only as obstacles in their way which ought to be removed. Others have taken an exactly opposite view, and would rather dissuade them from selling land under any circumstances; and in some places well-meaning individuals are constantly awaking suspicions and exciting alarm in the minds of a people who cannot be considered otherwise than savages (though of a superior description) by indiscreet letters or communications to the newspapers.

Under such circumstances causes of dissatisfaction may arise at any moment, and nothing but the utmost circumspection and the most careful management will prevent consequences the result of which it would be difficult to foresee.

Entertaining these opinions, I shall view with apprehension and object to any attempt to alter the provisions of the 73rd clause of the Constitution Act,¹ or to bring the powers thereby entrusted to the Governor in any way under the control of the Assembly.

13

MEMORANDUM OF RICHMOND (September 29, 1858)

[EXTRACT]²

(*P. P.*, 1860, xlvii.)

The present advisers of the Crown are absolutely opposed to any attempt to conduct the public business which may be considered to fall within the vague designation of native affairs by means of a department separate from the ordinary departments of Government, wholly independent of responsible Ministers, and looking directly to the Governor as its head. They have clearly expressed this opinion in a former memorandum—that of 22d August 1856; and understand that his Excellency the present Governor does not dissent from it.

Under the present system of Government in New Zealand it is vain to expect that cases in which Europeans and natives are in dispute can be satisfactorily dealt with by irresponsible officials. Yet such cases constitute the most difficult and menacing class of questions requiring the interference of Government. To insure the success of comprehensive measures of native policy it is already most desirable,

¹ See above, Section I, No. 45.

² C. W. Richmond was at first Colonial Secretary, and later Colonial Treasurer, in the Stafford Administration of 1856–61: of one of the strongest governments that has ever held office in New Zealand he was perhaps the most brilliant member. He was a Taranaki settler and was the member of the Ministry most conversant with native affairs: he later became Native Minister, but at present there was no such post. His acceptance of a seat on the bench in 1863 cut short his political career.

and in future years will become essential, to enlist the support of the settlers. It would consequently be the height of impolicy to attempt to exclude from influence upon native questions the leading public men of the colony, who are, many of them, well acquainted with the character and wants of the Maories, and without distinction of party, anxious to promote their welfare. Such a course would naturally tend to raise up influential opponents to the system pursued, who would have frequent opportunities of frustrating the efforts of Government. The intentions of the Executive would be suspected, misunderstood, and misrepresented. All political parties using the now powerful instrument of public opinion would combine to assail the Government policy and to decry its agents. Of these agents, the very persons would become odious to the settlers. The fatal jealousy of race would be aroused. And it is fearlessly asserted that no such administration could long endure the pressure to which it would be subjected, or could possibly succeed in a charge so difficult as that imposed upon the Government of this Colony. In addition to all this, it is impossible that the relations between the Executive and a free Legislature could ever be satisfactory under such arrangements. The legislation which will be from time to time required upon native subjects can only be conducted by members of the Assembly representing the Government, and they only can obtain the necessary supplies. Had it been desired to attempt in New Zealand such a system of exclusion, it would have been necessary to frame the colonial constitution in a very different way.

In contradistinction to such a plan, Ministers desire to see the department of native affairs conducted by one of the Ministry as its acknowledged head, but subject to the supervision and control of the Governor, as fully as before the establishment of responsible Government, with a recognized right on the part of his Excellency to interfere, if need should arise, in even the details of administration; and of being authentically informed of the opinions on every case as it arises, of the permanent officers of the department, who would, of course, be irremovable, except by his Excellency's consent; and with whom he would always be entitled to communicate personally. Thus much Ministers consider is due to Imperial interests, so long as a military force is maintained in the Colony at the expense of the mother country. They believe, however, that Imperial interests and the good of the natives would very rarely, under such a system, appear to require the active interference of the Governor in opposition to the Ministry.

The personal relations of the Governor with the native chiefs should by all means be preserved, and a certain sum should be at his Excellency's free disposal for acts of hospitality and liberality. The Governor's name should also be used in all official communications with natives.

Ministers understand that the system last described is that actually in operation under his Excellency's memorandum of 28th August 1856, replying to the last cited memorandum, although, in consequence mainly of the want hitherto of a native Minister, it has scarcely yet been brought effectively into play.

The foregoing observations refer necessarily to the ordinary executive powers of Government. Large measures of policy could generally be carried into effect only by the aid of the Legislature, which would impose its own conditions. Ministers are of opinion that those conditions should be such as to render the Governor and the Ministry jointly responsible for important acts not belonging to the ordinary routine of administration, such, for example, as the definition of the districts within which the 'Native Districts Regulation Act,' or the 'Native Circuit Courts Act'¹ shall be brought into operation, or the exercise of the legislative powers conceded to the Executive by the former Act. More especially should such joint responsibility be imposed where the revenue is affected, as by the gratuitous alienation of the waste lands of the Colony under such measures as the New Zealand Native Reserves Act, 1856, or the Native Territorial Rights Bill of the late Session.² On the other hand, the final determination respecting the appointment and dismissal of officers of the department, and respecting the expenditure of supplies duly appropriated for native services, should rest with the Governor solely.

The usual objections to the system just indicated are:

1st. That native policy would become a party question.

2d. That it would be rendered unstable; and,

3d. That the settlers alone are represented in the General Assembly, and cannot be trusted with the interests of the natives. As to the first objection, Ministers do not believe it at all probable that the native question would ever become the battle horse of faction in the General Assembly, at least in any manner adverse to native interests. Possibly, indeed, two parties might occasionally be found competing to secure the good-will of the natives, and to conciliate the influences generally arrayed in their support. Some evil might arise from this;

¹ The Native Districts Regulation Act empowered the Governor in Council to proclaim 'native districts' and make by-laws on many minor matters, and also for the suppression of injurious native customs: as far as possible these powers were to be exercised with the general consent of the natives. The Native Circuit Courts Act established circuit courts consisting of a Resident Magistrate and at least one native assessor in each district, and assessors' courts in minor cases, and also provided for trial by jury.

² The Native Reserves Act, 1856, was not particularly noteworthy except in that it provided that the appointments made by the Governor for the management of the reserves should be made with the advice and consent of the Executive Council. The Native Territorial Rights Bill, which failed to receive the confirmation of the Crown, provided for the ascertainment and registration of tribal titles to land and for the issue of Crown grants to individuals for lands ceded by their tribes: its object was to promote the individualization of native titles.

but, as already pointed out, the alternative course proposed by the objectors is one which would marshal in opposition to Government all political parties amongst the settlers, thereby incurring a far greater danger.

Again, stability in native administration is no doubt a prime requisite. But is it gained by placing the power in a single hand, and attempting to exclude the influence of colonial opinion? The objection overlooks the effect of a change of Governors, which already has been followed in this Colony by a sudden and violent alteration of policy. A change in the permanent head of the native department might produce a similar result. Changes in the *personnel* of the native department have been much more rapid than ministerial changes have hitherto proved in New Zealand. The utter impotence of a small knot of permanent officers, not perhaps always distinguished for superior intelligence, to resist the current of adverse public opinion in a highly cultivated British community is also overlooked. On the other hand, the steadiness with which representative institutions in English hands have ever been found to work is underrated. It is not sufficiently considered that the responsibilities of office, and the momentum of an established system would exercise their usual moderating influences—influences which would be felt, not only by those actually advising the Governor on native affairs, but in no small degree by their antagonists.

Lastly, the narrow jealousy of colonial interference betrayed by the third of the above mentioned objections appears to Ministers a grave moral mistake, which, if it were ever allowed to exercise a sensible influence in the conduct of affairs, might be expected to generate the very evil it falsely supposes to exist. There is at present no contrariety of interest between the colonists and the natives, nor any disposition on the part of the former to injure the latter. But a jealous administration would tend strongly to evoke and foster into activity every bad passion which could disturb the relations of the races, whereas a generous confidence in the good intentions of the settlers towards the natives tribes, a confidence thoroughly merited by the colonists of New Zealand, would increase the good feelings which now exist, and strengthen every bond of union. Thus only can the idea of fusion be ever realised, and the New Zealanders be preserved from the general fate of aboriginal races.

On the whole, it seems clear that under the liberal system, disputes between the races would be less envenomed and more easily healed; that Government would not want either tongues or pens to explain and to defend; to deprecate the excitation of evil passions, or to invoke the better feelings, which (after all) are not often appealed to in vain; lastly, that native affairs would be more steadily, as well as more vigorously administered, with a better prospect of ultimate success in the true policy of fusion.

DESPATCH FROM CARNARVON TO GORE BROWNE
(May 18, 1859) [EXTRACT]

(*P.P.*, 1860, xlvii.)

Her Majesty's Government wish to give the fullest effect to the system of responsible Government, and to leave all questions of domestic and internal interest to be decided by the Colonial Government, but they cannot, either for the sake of the colonists or for that of the natives, or for Imperial interests, surrender the control over native affairs, the administration of which has been, up to the present time, considering the difficulties and intricacies of the subject, crowned with a very remarkable success, and is paving the way towards that complete civilization and consolidation of the native race with the English colonists, which Her Majesty's Government, not less than the local Government, desire to see effected. And whilst Her Majesty's Government feel themselves constrained to justify to Parliament the large expense which every year is incurred for the maintenance of a military force in New Zealand for the defence of the colony, and for the better control and regulation of the native race, they must retain in their hands the administration of those affairs which at any moment may involve the employment of those troops, and the consequences of an expensive conflict. So long as the colony for this purpose enjoys the advantage of military and naval protection, Her Majesty's Government cannot undertake that indefinite expenditure of blood and treasure to which Mr. Richmond invites them.

DESPATCH FROM GORE BROWNE TO NEWCASTLE
[EXTRACTS]

(*P.P.*, 1860, xlvii.)

New Plymouth, New Zealand,
March 22, 1860.

MY LORD DUKE,

It is with much regret that I have to inform your Grace, that, notwithstanding every endeavour on my part to avoid hostilities, a collision has taken place between Her Majesty's troops at the Waitara and the natives.

For your Grace's convenience I enclose a printed statement of what has occurred up to the 18th March.

It is now clear to me that William King has been encouraged in his opposition by an assurance of formidable support, and that the

question of the purchase of an insignificant piece of land is merged in the far greater one of nationality.¹

I have insisted on this comparatively valueless purchase, because if I had admitted the right of a chief to interfere between me and the lawful proprietors of the soil I should soon have found further acquisition of territory impossible in any part of New Zealand.

I now turn to what is, in my opinion, the real question at issue. The Maoris have seen with alarm the numerical increase of the Europeans, and recognize, with bitterness of heart, their own decrease. It is in vain to suggest precautions which might be adopted, and which would (under God's providence) probably arrest or diminish this decrease. They connect their own decline with our ascendancy. They talk and think of themselves as of a race dying out, and the King movement, and the land league, are only practical results of this feeling. The old savages, of whom there are still many, remind their hearers that the decrease of their nation commenced with the arrival of the Europeans, and they have a firm superstition that we are in some way connected with it.

From the best information I can obtain, I am led to believe that the present is an exceedingly critical time. The progress of civilization, which I have watched and reported with so much satisfaction, and the increased community of interest between the races, especially in the north, has alarmed the old chiefs and others who cling to a distinct nationality, and has led to extensive combinations on national grounds, against what they term foreign dominion. Hence the extension of the King movement. Tribes heretofore at deadly enmity with each other, and who would gladly have joined us to be revenged on their opponents, have buried their tribal quarrels, and are ready to unite to arrest the progress of the Europeans, and throw off their dominion. . . . I have placed all these difficulties before your Grace, not as considering them in any way insuperable, but in the hope of convincing you that unless matters take a more favourable turn than we have any right to expect, a much larger number of troops than has hitherto been asked for will be necessary to maintain possession of the colony at all.

¹ William King, or Wiremu Kingi, was a chief of the Ngatiawa tribe in Taranaki. He claimed a paramountcy over the other chiefs of the district, and attempted in virtue of that claim to forbid the sale of a certain tract of land to the Government by the chief Teira. The view of the Government was that any such paramountcy had been lost when the Ngatiawas were defeated, and for the time expelled, by the Waikatos many years before; but as a matter of fact subsequent inquiry showed that Wiremu Kingi's claim was well founded and that Teira's real object had been to avenge himself for a private wrong.

DESPATCH FROM LEWIS TO GORE BROWNE

(July 26, 1860) [EXTRACTS]¹

(P.P., 1860, xlvii.)

I must at once say that in the present posture of affairs, and with the demands for troops which exist, or may be expected in other quarters, it is impossible for Her Majesty's Government to comply with your desire to receive 3,000 or 4,000 soldiers, in addition to your present force. Measures, however, have been taken to dispatch the 14th Regiment at once for the relief of the 65th, which will be allowed to remain in the colony for the present, in case on the arrival of the 14th the immediate danger should not have passed over. I trust that it will have passed. And if this should prove the case I cannot but believe that wise government and prudent conduct on the part of the settlers will do far more than an increased military force to maintain the relations between the Europeans and natives on a satisfactory footing.

Meantime I must observe, that, although it is the desire of Her Majesty's Government to provide fully for the performance of those duties which the mother country owes to her colonies, I cannot silently accept what appears to be the colonial estimate of those responsibilities.

England cannot undertake the defence, against a nation of warlike savages, of a number of scattered farms or villages, selected, not with any view to such defence, but to the profitable pursuit of peaceful industry, and subject to the risks which necessarily attend the occupation of land in the midst of an uncivilized population.

Nor can Her Majesty's Government undertake to provide such a force as will secure the colonists against prospective difficulties. Immediate and imminent dangers must be met as they arise. But a policy which requires the continued presence of a large force carries, in most cases, its condemnation on its face.

What is the degree of protection which the inhabitants of a British colony are entitled to expect from the Home Government is a matter on which it is impossible to speak in the abstract. It is no doubt necessary to punish aggression, to defend the centres of population, to maintain a hold upon the keys of the country. But beyond this the amount of assistance given must depend on the demands to which the military and naval forces of the country are subjected elsewhere, and on the urgency of the case as shown, not merely by demands for assistance, but by the disposition of the colonists to adopt their share of the necessary expenses, to incur for the defence of their neighbours the dangers and inconveniences of personal service, and to place in

¹ This despatch was signed by Sir G. C. Lewis, who was Home Secretary, in the absence of the Duke of Newcastle, who then held the Colonial Office.

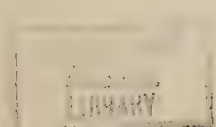
the hands of the Home Government the power of controlling the treatment of those whom they are called upon to subdue.

And I cannot refrain from observing, that neither your despatches nor Mr. Richmond's memorandum¹ indicate any definite intention on the part of the colonists to contribute to the expense of the troops whom they demand; that the volunteering appears to be confined to the particular localities threatened; and that Mr. Richmond, while calling upon the Home Government to adopt the expenses of the war, does not even hint at the propriety of investing it with any larger powers than they at present possess for dealing with the native question out of which these expenses arise. I may add that a Bill introduced into Parliament to provide an effectual machinery for the exercise by the Crown of the powers reserved to it by the Constitutional Act is threatened with a determined opposition by gentlemen professing to represent the feelings of the colonists.² . . .

I allude to these circumstances, not of course as relieving the Home Government from the duty of supporting the colony against a pressing danger, but because they must materially affect the disposition of the British Government and people to consent to yield a point which, in their opinion, is so intimately connected with the security of the colony, the justice due to native claims, and the issues of peace or war itself.

¹ This memorandum, dated April 27, 1860, reviewed the history of the Maori King movement in the Waikato and of the Taranaki dispute, and concluded by expressing the view that the colonists had not sufficient resources to sustain a general war with the Maoris and that it was incumbent upon the British Government to place at the disposal of the Governor an adequate naval and military force.

² This Bill was finally abandoned.



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